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भारत का राजपत्र
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सं. 29] नई दिल्ली, जुलाई 21—जुलाई 27, 2024, शनिवार/ आषाढ़ 30—श्रावण 5, 1946
No. 29] NEW DELHI, JULY 21—JULY 27, 2024, SATURDAY/ASHADHA 30– SRAVANA 5, 1946

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 24 अप्रैल, 2024

का.आ. 1428.—भारतीय रिजर्व बैंक अधिनियम, 1934 की धारा 8 की उप-धारा (4) के साथ पठित धारा 8 की उप-धारा (1) के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, श्री टी. रबि शंकर (जन्म तिथि 14.3.1963) को दिनांक 3.5.2024 से एक वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, भारतीय रिजर्व बैंक में उप-गवर्नर के पद पर पुन: नियुक्त करती है।

[फा. सं. 1/1/2011-बीओ-I (खंड-II)]
विजय शंकर तिवारी, अवर सचिव

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 24th April, 2024

S.O. 1428.—In exercise of the powers conferred by clause (a) of sub-section (1) of section 8 of The Reserve Bank of India Act, 1934, read with sub-section (4) of section 8 thereof, the Central Government hereby re-appoints Shri T. Rabi Sankar (DoB: 14.3.1963) as Deputy Governor, Reserve Bank of India for a period of one year with effect from 03.05.2024, or until further orders, whichever is earlier.

[F. No. 1/1/2011-BO.I (Vol.-II)]

VIJAY SHANKAR TIWARI, Under Secy.

नई दिल्ली, 13 मई, 2024

का.आ. 1429.—बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1970 की धारा 9 की उप-धारा (3) के खंड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतदद्वारा, श्री मुकेश कुमार बंसल के स्थान पर डॉ. एम. पी. तन्गिराला (अपर सचिव, भारत सरकार, वित्त मंत्रालय, वित्तीय सेवाएं विभाग) को तत्काल प्रभाव से और अगले आदेशों तक, बैंक आफ बड़ौदा के बोर्ड में निदेशक नामित करती है।

[फा. सं. 6/2(i)/2022-बीओ-I]

संजय कुमार मिश्र, अवर सचिव

New Delhi, the 13th May, 2024

S.O. 1429.—In exercise of the powers conferred by clause (b) of sub-section (3) of section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, the Central Government hereby nominates Dr M P Tangirala (Additional Secretary, Government of India, Ministry of Finance, Department of Financial Services) as Director on the Board of Bank of Baroda, with immediate effect and until further orders, *vice* Shri Mukesh Kumar Bansal.

[F. No. 6/2(i)/2022-BO-I]

SANJAY KUMAR MISHRA, Under Secy.

नई दिल्ली, 13 मई, 2024

का.आ. 1430.—बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1970 की धारा 9 की उप-धारा (3) के खंड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतदद्वारा, डॉ. एम. पी. तन्गिराला के स्थान पर डॉ. आलोक पाण्डे (अपर सचिव, भारत सरकार, वित्त मंत्रालय, निवेश और लोक परिसंपत्ति प्रबंधन विभाग) को तत्काल प्रभाव से और अगले आदेशों तक, इंडियन बैंक के बोर्ड में निदेशक नामित करती है।

[फा. सं. 6/2(ii)/2022-बीओ-I]

संजय कुमार मिश्र, अवर सचिव

New Delhi, the 13th May, 2024

S.O. 1430.—In exercise of the powers conferred by clause (b) of sub-section (3) of section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, the Central Government hereby nominates Dr Alok Pande (Additional Secretary, Government of India, Ministry of Finance, Department of Investment and Public Asset Management) as Director on the Board of Indian Bank, with immediate effect and until further orders, *vice* Dr M P Tangirala.

[F. No. 6/2(ii)/2022-BO-I]

SANJAY KUMAR MISHRA, Under Secy.

नई दिल्ली, 13 मई, 2024

का.आ. 1431.—बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1970 की धारा 9 की उप-धारा (3) के खंड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतदद्वारा, डॉ. संजय कुमार के स्थान पर श्री सुधीर श्याम (आर्थिक सलाहकार, भारत सरकार, वित्त मंत्रालय, वित्तीय सेवाएं विभाग) को तत्काल प्रभाव से और अगले आदेशों तक, यूको बैंक के बोर्ड में निदेशक नामित करती है।

[फा. सं. 6/2(iii)/2022-बीओ-I]

संजय कुमार मिश्र, अवर सचिव

New Delhi, the 13th May, 2024

S.O. 1431.—In exercise of the powers conferred by clause (b) of sub-section (3) of section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, the Central Government hereby nominates Shri Sudhir Shyam (Economic Advisor, Government of India, Ministry of Finance, Department of Financial Services) as Director on the Board of UCO Bank, with immediate effect and until further orders, *vice* Dr Sanjay Kumar.

[F. No. 6/2(iii)/2022-BO-I]

SANJAY KUMAR MISHRA, Under Secy.

विदेश मन्त्रालय

(सी. पी. वी. प्रभाग)

नई दिल्ली, 22 जुलाई, 2024

का.आ. 1432.—राजनयिक और कोंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश ।

एतद् द्वारा,सरकार भारत के दूतावास, जूबा (दक्षिण सूडान) मेँ श्री सुमित कुमार, सहायक अनुभाग अधिकारी, को जुलाई 22, 2024 से सहायक कांसुलर अधिकारी के रूप में कांसुलर सेवाओं का निर्वहन करने के लिए अधिकृत करती है।

[फा. सं. टी-4330/01/2024(24)]

एस. आर. एच. फहमी, निदेशक (सीपीवी-I)

New Delhi, the 22nd July, 2024

S.O. 1432.—Statutory Order in pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1048), the Central Government hereby appoints Shri Sumit Kumar, Assistant Section Officer as Assistant Consular Officer in the Embassy of India, Juba (South Sudan), to perform the consular services as Assistant Consular Officer with effect from July 22, 2024.

[F. No.T.4330/01/2024(24)]

S. R. H FAHMI, Director (CPV-I)

कार्मिक, लोक शिकायत और पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 16 जुलाई, 2024

का.आ. 1433.—केंद्र सरकार, राजभाषा [संघ के शासकीय प्रयोजनों के लिए प्रयोग] नियमावली, 1976 (यथा संशोधित 1987, 2007 और 2011) के नियम 10 के उप-नियम (4) के अनुसरण में कार्मिक और प्रशिक्षण विभाग के अधीनस्थ कार्यालय, कर्मचारी चयन आयोग (मु.) के अधीन **क्षेत्रीय कार्यालय, कर्मचारी चयन आयोग (उ.पू.क्षे.), गुवाहाटी**, जिसके 80 प्रतिशत से अधिक कर्मचारियों ने हिंदी भाषा का कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है।

[फा. सं. ई-11017/1/2022-हिंदी]

एस. डी. शर्मा, संयुक्त सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 16th July, 2024

S.O. 1433.—Central Government, in pursuance of Sub-Rule (4) of Rule 10 of official languages [Use for official purpose of union] Rules, 1976 (as amended in 1987, 2007 and 2011), hereby notifies **Regional office, Staff Selection Commission (NER), Guwahati** an office under the Staff Selection Commission (Hqrs.), a subordinate office of Department of Personnel and Training, whose more than 80 percent staff has acquired working knowledge of Hindi language.

[F. No. E-11017/1/2022-Hindi]
S. D. SHARMA, Jt. Secy.

वाणिज्य एवं उद्योग मंत्रालय

(वाणिज्य विभाग)

नई दिल्ली, 12 जुलाई, 2024

का.आ. 1434.—केन्द्रीय सरकार, निर्यात (गुणवत्ता नियंत्रण एंव निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उपधारा (1) के साथ पठित निर्यात (गुणवत्ता नियंत्रण एंव निरीक्षण) नियम, 1964 के नियम 12, के उपनियम (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार में वाणिज्य और उद्योग मंत्रालय की अधिसूचनाओं सं॰का.आ. 730, सं॰का.आ. 731, सं॰का.आ. 732 दिनांक 15 सितम्बर 2021 एवं सं॰का.आ. 1627 दिनांक 10 अक्टूबर, 2023 भारत के राजपत्र, भाग II, खंड 3, उप-खंड (ii) में प्रकाशित में निम्नलिखित संशोधन करती है, अर्थात्:-

उक्त अधिसूचनाओं में-

(i) " थेरेप्यूटिक्स केमिकल रिसर्च कॉरपोरेशन" शब्दों के स्थान पर "टीसीआरसी क्वालिटी कंट्रोल एलएलपी" शब्द प्रतिस्थापित किये जाएंगे।

[फा. सं. के-16014/7/2021 - निर्यात निरीक्षण]

सिद्धार्थ महाजन, संयुक्त सचिव

MINISTRY OF COMMERCE AND INDUSTRY

(Department of Commerce)

New Delhi, the 12th July, 2024

S.O. 1434.—In exercise of the powers conferred by the sub-section (1) of section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963), read with sub-rule (2) of rule 12 of the Export (Quality Control and Inspection) Rules, 1964, the Central Government hereby makes the following amendment in the notifications of the Government of India in the Ministry of Commerce and Industry, vide numbers S.O. 730, S.O. 731, S.O. 732 dated 15th September, 2021 and S.O. 1627 dated 10th October, 2023 published in the Gazette of India, Part II, Section 3, Sub-section (ii), namely:-

In the said notifications-

(i) For the words "Therapeutics Chemical Research Corporation", the words "TCRC Quality Controls LLP" shall be substituted.

[F. No. K-16014/7/2021-Export Inspection]

SIDDHARTH MAHAJAN, Jt. Secy.

नई दिल्ली, 16 जुलाई, 2024

का.आ. 1435.—केन्द्रीय सरकार, निर्यात (गुणवत्ता नियंत्रण एंव निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उपधारा (1) के साथ पठित निर्यात (गुणवत्ता नियंत्रण एंव निरीक्षण) नियम, 1964 के नियम 12, के उपनियम (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मैसर्स मित्रा एस. के. प्राइवेट लिमिटेड, हाउसिंग बोर्ड कॉलोनी,

एचबी - 44, मधुबन, पारादीप, जिला जगतसिंहपुर, ओडिशा - 754142, (जिसे एतद्पश्चात उक्त अभिकरण कहा जायेगा), को इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से तीन वर्ष की अवधि के लिए, वाणिज्य मंत्रालय की शासकीय राजपत्र में प्रकाशित भारत सरकार की अधिसूचना के साथ अनुसूची में निर्दिष्ट दिनांक 20 दिसम्बर, 1965 की अधिसूचना की सं॰का.आ. 3975,तथा दिनांक 20 दिसम्बर, 1965 की अधिसूचना सं॰ का.आ. 3978 के तहत प्रकाशित अधिसूचना में उपाबद्ध अनुसूची में विनिर्दिष्ट खनिज और अयस्क समूह-I, अर्थात, लौह अयस्क, मैंगनीज अयस्क, फेरोमैंगनीज स्लैग सहित फेरोमैंगनीज और समूह-II, अर्थात, मैंगनीज डाइऑक्साइड, क्रोम कंसन्ट्रेट सहित क्रोम अयस्क, के निर्यात से पूर्व निम्नलिखित शर्तों के अधीन पारादीप पत्तन, धामरा पत्तन तथा गोपालपुर पत्तन में उक्त खनिज और अयस्क के निरीक्षण करने के लिए एक अभिकरण के रुप में मान्यता देती है, अर्थात् :

(i) यह अभिकरण, खनिज और अयस्क समूह-I का निर्यात (निरीक्षण) नियम, 1965 खनिज और अयस्क तथा समूह-II का निर्यात (निरीक्षण) नियम, 1965 के नियम 4 के अधीन निरीक्षण की पद्धति की जाँच करने के लिये निर्यात निरीक्षण परिषद् द्वारा निमित्त अधिकारियों को पर्याप्त सहयोग और सहायता प्रदान करेगी;

(ii) यह अभिकरण, इस अधिसूचना में यथा विनिर्दिष्ट अपने कार्यो का निष्पादन करने के लिए, निदेशक (निरीक्षण और गुणवत्ता नियंत्रण) निर्यात निरीक्षण परिषद द्वारा समय-समय पर, लिखित रूप में, दिए गए निर्देशों से आबद्ध होंगी ।

[फा. सं. के-16014/5/2024 - निर्यात निरीक्षण]

सिद्धार्थ महाजन, संयुक्त सचिव

New Delhi, the 16th July, 2024

S.O. 1435.—In exercise of the powers conferred by sub-section (1) of section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963) read with sub-rule (2) of rule 12 of the Export (Quality Control and Inspection) Rules, 1964, the Central Government now recognizes, M/s. Mitra S.K. Private Limited, Housing Board Colony, HB – 44, Madhuban, Paradip, District Jagatsinghpur, Odisha - 754142, (hereinafter referred to as the said agency), as an agency for three years with effect from the date of publication of this notification in the Official Gazette, for the inspection of Minerals & Ores, Group - I, namely, Iron Ore, Manganese Ore, Ferromanganese including Ferromanganese slag and Group – II, namely, Manganese dioxide, Chrome Ore including Chrome Concentrate, as specified in the Schedule annexed to the notification of the Government of India in the Ministry of Commerce, published in the Official Gazette *vide* number S.O.3975 dated 20th December, 1965, and S.O. 3978, dated the 20th December, 1965 respectively, before export of the said Minerals and Ores at Paradip Port, Dhamra Port and Gopalpur Port, subject to the following conditions, namely: -

(i) the said agency shall extend adequate cooperation and assistance to the officers nominated by the Export Inspection Council on this behalf to carry out the inspection specified under rule 4 of the Export of Minerals and Ores – Group I (Inspection) Rules, 1965 and Export of Minerals and Ores – Group II (Inspection) Rules, 1965;

(ii) the said agency, in performance of their function as specified in this notification, shall be bound by such directions, as the Director (Inspection and Quality Control), Export Inspection Council may give, in writing from time to time.

[F. No. K-16014/5/2024-Export Inspection]

SIDDHARTH MAHAJAN, Jt. Secy.

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 24 जुलाई, 2024

का.आ. 1436.—केंद्रीय सरकार ने पेट्रोलियम और खनीज पाइपलाइन (भूमि मे उपयोग के अधिकार के आर्जन) अधिनियम, 1962 (1962 का 50) की धारा 2 केखंड (क) के अनुसरण में, तमिलनाडु राज्य क्षेत्र के भीतर तक अधिनियम के अधीन, कोची सेलम पाइपलाइन प्राइवेट लिमिटेड(केएसपीपीएल) की कोची-कोयम्बटूर- सेलम एलपीजी पाइपलाइन के लिए, तमिलनाडु राज्य में सक्षम प्राधिकारी के कृत्यों का पालन करने के लिए केएसपीपीएल ने प्रतिनियुक्ति पर का आ 2178 (अ) दिनांक14/06/2022 भारत के राजपत्र संख्या 2590 दिनांक14/06/2022 के अंतर्गत अधिसूचित सक्षम प्राधिकारी श्री ऐ जे सेंथिल अरसन, डिप्टी कलक्टर, के स्थान पर श्रीमती एस विष्णुवर्धिनी, डिप्टी कलक्टर, जिनकी नियुक्ति नोडल अधिकारी कोची सेलम पाइपलाइन प्रोजेक्ट कोयम्बटूर है, को प्राधिकृत करती है।

2. यह अधिसूचना जारी होने की तारीख से लागू होगी।

[फा. सं. आर-12031/1/2021-ओआर-II/ई-39085]

शशि शेखर सिंह, अवर सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 24th July, 2024

S.O. 1436.—In pursuance of clause (a) of section 2 of the petroleum and mineral pipelines (acquisition of right of user in land) Act, 1962(50 of 1962), the Central Government hereby authorizes Smt S. Vishnuvardhini, Deputy Collector, in place of earlier notified competent authority Mr. A J Senthil Arasan, Deputy Collector Vide S.O. No. 2718(E) dated 14/06/2022 published in Gazette of India No. 2590 dated 14/06/2022 on deputation to Kochi Salem Pipeline Private Limited (KSPPL), who is appointed as Nodal Officer for Kochi Salem Pipeline Project Coimbatore, to perform the functions of the Competent authority, in the state of Tamilnadu for Kochi Salem Pipeline Private Limited's Kochi-Coimbatore-Salem LPG Pipeline under the said act.

2. This notification will be effective from the date of its issue.

[F. No. R-12031/1/2021-OR-II/E-39085]

SHASHI SHEKHAR SINGH, Under Secy.

पृथ्वी विज्ञान मंत्रालय

नई दिल्ली, 23 जुलाई, 2024

का.आ. **1437.**—भारतीय अंटार्कटिक अधिनियम, 2022 (वर्ष 2022 का 13) की धारा 30 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केंद्र सरकार उक्त अधिनियम के प्रावधानों के तहत भारत में कर्तव्यों का निर्वहन करने एवं निरीक्षण करने की शक्तियों का प्रयोग करने के लिए डॉ. अपर्णा शुक्ला, वैज्ञानिक, पृथ्वी विज्ञान मंत्रालय, नई दिल्ली तथा डॉ. अविनाश कुमार, वैज्ञानिक, राष्ट्रीय ध्रुवीय एवं समुद्री अनुसंधान केन्द्र, गोवा को एतद्वारा निरीक्षक नामित करती है।

[फा. सं. MoES/POLAR/IAA-2022/1/2024-PC 1]

मीना गोपीनाथ, अवर सचिव

MINISTRY OF EARTH SCIENCES

New Delhi, the 23rd July, 2024

S.O. 1437.—In exercise of the powers conferred by sub-section (1) of section 30 of the Indian Antarctic Act, 2022 (13 of 2022), the Central Government hereby designate Dr. Aparna Shukla, Scientist, Ministry of Earth Sciences, New Delhi and Dr. Avinash Kumar, Scientist, National Centre for Polar and Ocean Research, Goa as Inspectors for performing the duties and exercising the powers of inspections in India under the provisions of the said Act.

[F. No. MoES/POLAR/IAA-2022/1/2024-PC1]

MEENA GOPINATH, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 28 जून, 2024

का.आ. 1438.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में,केन्द्रीय सरकार **प्रबंध निदेशक, स्कूटर्स इंडिया लिमिटेड, सरोजिनी नगर, लखनऊ,** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री हरिनायक सिंह, कामगार,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह-श्रम न्यायालय, लखनऊ पंचाट (संदर्भ

संख्या 18/2012) को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 27.06.2024 को प्राप्त हुआ था।

[सं. एल-42011/133/2011-आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 28th June, 2024

S.O. 1438.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 18/2012) of the **Central Government Industrial Tribunal cum Labour Court, Lucknow** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Managing Director, Scooters India Ltd., Sarojini Nagar, Lucknow, and Shri Harinayak Singh, Worker,** which was received along with soft copy of the award by the Central Government on 27.06.2024.

[No. L-42011/133/2011-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, LUCKNOW

PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I.D. No.18 of 2012

Ref. No. L-42011/133/2011-IR(DU) dated: 04.01.2012

BETWEEN

Shri Harinayak Singh, village – Natkur Post – Sarojini Nagar, Lucknow

AND

The Managing Director, Scooters India Ltd., Sarojini Nagar, Lucknow.

AWARD

Sri V.K. Jaiswal - Counsel for the Applicant/Workman

Sri A.K. Singh & Sri Sharad Shukla- Counsel for the Respondent

On 04.01.2012 appropriate government by order no.L-42011/133/2011-IR (DU) has referred the following dispute to this Tribunal and accordingly the I.D. Case No. 18 of 2012 (Harinayak Singh M/s. Scooter India Ltd.) was registered;:-

> *"Whether the action of the management of Scooters India Ltd., Lucknow in not considering the application of workman Sri Harinayak Singh, Grade 'C' dated 03.12.1993 and voluntarily retiring him w.e.f. 31.12.1993 without paying entire pensionery benefits, is legal and justified? What relief the workman is entitled to?"*

Case of claimant:

On 26.3.2012 on behalf of workman, Statement of Claim filed stating therein the following averments :-

a) The applicant was appointed as semi skilled worker under the opposite party/employer on 20.11.1973 being fully eligible for the post and his Service No. is 1095 and he was initially granted Grade 'C'. The applicant/workman started performing his work and duties with all satisfaction of his all concerned.

b) All of sudden in the year 1993 a rumors was flown away in the campus of company that Manager of the respondent is saying that the company is going to be windup within a very short period due to heavy financial loss and as such employees may take his all service benefits as soon as possible from the company otherwise company will not responsible for the same. Those employees who will seek his voluntary retirement under the announced voluntary retirement scheme, they will call back in job/service on requirement of work on seniority basis.

c) The applicant believing rumor on 30.11.1993 applied for his voluntary retirement with effect from 31.03.1994 under the voluntary retirement scheme dated 8.12.1988.

d) A circular dated 6.11.1993 was also circulated by the respondent stating therein that the voluntary retirement scheme circulated vide circular dated 8.12.1988 will remain suspended with effect from 1.12.1993.

e) The applicant immediately on 03.12.1993 moved an application for withdrawing his voluntary retirement, which was sought by him with effect from 31.03.1994, then he came to know that his voluntary retirement has already been accepted by the management of opposite party on the same date i.e. on which he moved an application on 30.11.1993.

f) The management was fully aware with all things but voluntary retirement of the applicant was accepted knowingly and with mal intention on the same date when the applicant submitted his VRS application i.e. on 30.11.1993 only to oust him from the job, therefore the action of the respondent is quite bad in law and unjust.

g) The applicant applied for voluntary retirement on 30.11.1993 w.e.f. 31.03.1994 but his voluntary retirement was accepted by the respondent on the same date when he moved his application on 30.11.1993. The management is well known that the VRS circulated vide letter dated 8.12.1988 will remain suspended w.e.f. 1.12.1993, therefore, action of the respondent in accepting his VRS w.e.f. 30.11.1993 instead of 31.03.1994 is fully illegal, arbitrary and unjust.

h) If the applicant's voluntary retirement was not accepted w.e.f. 30.11.1993 i.e. on the date when he moved his application for VRS, his application would be cancelled or rejected by the management of the respondent as he submitted another application dated 03.12.1993 for withdrawing his voluntary retirement and thus he would remain in job till attaining his retirement age from the job. In view of this the respondent may be directed to pay entire salary and other service benefits to the applicant from the date of his relieve till the date of his retirement.

i) It is provided in the standing orders of the company that the pay will be revised on each 5 years of employees which has not been done in the matter of the applicant before accepting his VRS. The company is quietly running till date, therefore his voluntary retirement deserves to be quashed and the respondent be directed to reinstate the applicant on the post with full salary benefits from the date of relieve from the job till his date of retirement from the post and pay his entire due salary with 12% interest to the applicant.

Case of respondent:

On 25.07.2012 the written statement filed on behalf of the respondent M/s. Scooters India Limited taking the following **preliminary objections** :-

a) The matter of dispute does not constitute a valid industrial dispute, as the dispute has not been transformed into an industrial dispute within the meaning of the terms as defined in Industrial Disputes Act 1947.

b) The Central Government has not taken facts in cognizance while making a reference to the Tribunal. The reference is not based on the pleadings of the parties advanced at the conciliation stage, especially the submissions of the respondent before the Conciliation Officer/Government have been completely ignored, while making the reference for adjudication. No cause of action arose on the date as mentioned in reference order as such also on his ground alone, the reference order is bad in the eyes of law.

c) The Industrial Disputes Act 1947 has been amended vide Industrial Disputes (Amendment) Act, 2010 (Act No.24 of 2010) and period of limitation has been provided by virtue of Section 2A(3), which is quoted as below:-

> *"2A(3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of services as specified in sub-section (1)"*

d) A period of limitation has been provided i.e. three years from the alleged date of termination of services, but the instant case has arisen after a period of 18 years which is liable to the dismissed on the ground of limitation alone.

e) Even otherwise, the applicant has not raised industrial dispute within reasonable time. The applicant has raised an industrial dispute regarding his acceptance of Voluntary Retirement very belatedly i.e. after elapse of more than about 18 years. It is trite law as held by the Apex Court that the dispute must be raised within reasonable period of time from the cause of action and where the industrial dispute is not raised within reasonable period of time the Labour Court or Industrial Tribunal should decline to grant any interim relief to the workman.

f) The Apex Court in the case of Nedungadi Bank Ltd. Versus K.P. Madhavankutty & others : 2000(84) FLR 673 SC, S.M. Niljakar Vs. Telecom District Manager, Karnataka:2003(97) FLR 608 SC, Manager R.B.I. Vs.

Gopinath Sharma : 2006 FLR (110) FLR 803 SC has already held that the dispute must be raised within reasonable period of time from the cause of action and a dispute which is state could not be subject matter of reference.

g) The present reference is highly belated, inasmuch as it is made after more than eighteen years from the alleged date of cause of action. The instant delay caused prejudice to the respondent since the management not presumed to preserve the relevant record for such a long period.

h) It is settled law of the land that the person who is approaching this Tribunal should come with clean hand but in the instant matter, the applicant has concealed the actual material facts which are very necessary for the purposes of the adjudication of present matter of dispute, if any, as such also the reference is not maintainable before this Tribunal and accordingly deserves to be rejected.

i) Earlier the applicant had raised an industrial dispute under the provisions of Section 2A of the U.P. Industrial Disputes Act before the validly appointed conciliation officer. The conciliation officer on its turn called upon the parties for hearing and after conducting the necessary proceedings, the aforementioned application had been rejected by the competent authority.

j) The applicant preferred a Writ Petition No. 2620 (SS) of 1999 (Rajendra Singh & another Vs. Scooters India Limited & others) along with some other ex-employees of the Company before the Hon'ble High Court, Lucknow Bench, Lucknow challenging the order passed by the competent authority and the Hon'ble High Court had been pleased to dismiss the aforesaid writ petition including bunch of writ petitions bearing W.P.No.2146 (SS) of 2000, W.P.No.6654 (SS) of 1999, W.P. No.2620 (SS) of 2000, W.P. No.1625 (SS) of 2000, W.P. No.1745 (SS) of 2000, W.P. No.1644 (SS) of 2000, W.P. No.1635 (SS) of 2000 & W.P. No.1624 (SS) of 2000 vide judgment and order dated 8.2.2006 after holding that there is no dispute that the petitioners themselves had approached the scheme and had accepted all the benefits and after accepting all the benefits, after a lapse of long time, had tried to raise this dispute. Further the Hon'ble Court has held that the Conciliation Officer, in these circumstances for sufficient reasons disallowed the application of the petitioners.

k) A Review Petition No.76 of 2006 was also filed by the applicant which has also been dismissed by the Hon'ble High Court, Lucknow Bench, Lucknow vide its judgment and order dated 13.5.2008. Thus it is clear that the matter has already been adjudicated upon by the competent court of law and these facts have not been disclosed by the applicant in their written statement, which amounts to concealment of facts and the instant application is liable to be dismissed on this ground alone.

l) An identical situated employee had also preferred a Writ Petition No.1165(SS) of 1994:Jagdish Chandra Nigam Versus M/s. Scooters India Limited before the Hon'ble High Court, Lucknow Bench, Lucknow challenging the action of the management in accepting the application for voluntary retirement, which has been dismissed by means of detail judgment and order dated 9.1.1997.

m) Being aggrieved from the aforesaid judgment and order dated 9.1.1997, Special Appeal No.48 (SB) of 1997 was preferred before the Division Bench of the Hon'ble High Court, Lucknow Bench, Lucknow and after conducting the necessary proceedings, the Hon'ble Division Bench of the Hon'ble High Court decided the said special appeal by means of judgment and order dated 18.12.2000 and set aside the judgment and order passed by the Single Judge to the extent that in case of the appellant/petitioner deposits the entire amount which he has received through cheque dated 12.3.1994 alongwith interest at the rate of 12% with respondent company as well as other benefits which might have been given to the appellant within four weeks from the production of certified copy of the order, the appellant will be reinstated in service.

n) The management preferred Special Leave Petition challenging the judgment and order dated 18.12.2000 before the Hon'ble Supreme Court of India, which was letter on converted into Civil Appeal No.1089 of 2004:M/s. Scooters India Limtied & others Vs. Jagdish Chandra Nigam which was allowed by means of the judgment and order dated 12.2.2004 and the judgment and order dated 18.12.2000 rendered by the Division Bench of the High Court, Lucknow Bench, Lucknow has been set aside.

o) Being aggrieved from the judgment and order dated 12.2.2004, Sri Jagdish Chandra Nigam had preferred a Review Petition No.747 of 2004: J.C. Nigam Vs. M/s. Scooters India Limited, which has also been dismissed by the Hon'ble Supreme Court of India vide its judgment and order dated 28.4.2004. Sri Nigam also preferred a Curative Petition No.152 of 2008 and the same has also been dismissed by the Constitution Bench of Hon'ble Supreme Court vide its judgment and order dated 21.1.2009. Thus it is crystal clear that the matter in dispute has already been decided by the competent court of law and now nothing remains to be adjudicated upon by this Tribunal.

p) It is crystal clear that the principles of res-judicata applies into the matter and accordingly the reference is liable to be rejected, out rightly without going into the merit of the case.

Accordingly, it has been prayed by respondent that the present industrial dispute may be dismissed being devoid of any merit.

Thereafter documents, evidences etc. had been exchanged between the parties. Sri Sharad Kumar Shukla, Learned Counsel for the respondent submits that the preliminary objections taken by them may be considered first and thereafter the matter be heard on merits.

Finding & conclusion on the Preliminary Objections:

I have heard Sri V.K. Jaiswal, learned counsel for claimant and Sri Sharad Kumar Shukla and Sri A.K. Singh, learned counsel for the respondent.

It is not in dispute between the parties that Harinayak Singh-applicant/workman was appointed as semi skilled worker in establishment known as Scooter India Limited on 20.11.1973, Grade-C having service No. 1095. Scooter India Limited floated a scheme known as Voluntary Retirement (hereinafter referred to as 'VRS').

On 30.11.1993 applicant submitted an application for opting VRS and the same was accepted by the respondent on 30.11.1993 and his date of release under the said scheme was notified as 31.11.1993 and consequently applicant was voluntary retired from service under the Scheme with all consequential benefits and the same were received by him.

Meanwhile on 6.11.1993 a circular was issued which reads as under:-

> "*Sub: Voluntary Retirement Scheme – suspension thereof*
>
> *The Voluntary retirement scheme circulated vide circular no.SIL/PER/NC-63/88 dated 8.12.88 for the employees of the Company will remain suspended w.e.f.1.12.1993*."

So a letter/representation dated 03.12.1993, submitted by applicant for withdrawal/rejection of his application dated 30.11.1993 for voluntary retirement from services on the ground mentioned therein.

From the material on record the position which emerges out that initially aggrieved by the action of the respondent thereby not considering application of the workman/applicant dated 03.12.1993 for rejecting/withdrawing acceptance of voluntary retirement by him under the scheme known as Voluntary Retirement Scheme, he raised a industrial dispute under Section 2-A of Industrial Disputes Act which rejected by the Conciliation Officer.

Aggrieved by the said facts, the workman/applicant along with other similarly situated employees filed a Writ Petition no. 2620 (SS) of 2000 (Rajendra Singh & others Versus M/s. Scooter India Limited & others).

The said writ petition was heard by the Hon'ble High Court along with leading Writ Petition No.2146 (SS) of 2000 (S.V. Jaiswal Versus M/s. Scooter India Limited & others).

By means of order dated 8.2.2006 the Hon'ble High Court dismissed the Writ Petition No.2146 (SS) of 2000 along with other connected writ petitions including the Writ Petition No. 2620 (SS) of 2000, the relevant portion, quoted below:-

> "*The question whether voluntary retirement would come under the definition of retrenchment or compulsory retirement or not, was considered in a number of cases which have been relied upon by the learned counsel appearing on behalf of the opposite party, one main of them has been reported in 1997(2), UPLBEC 1262, Jagdish Chand Nigam Vs. Scooter India Limited.*
>
> *In similar circumstances, the petitioners had taken voluntary retirement. The Bench of this court observed that the petitioner had occupied offer of his premature retirement, in order to receive the compensation, for the last tenure of service offered by the respondents. The offer made by the employers was accepted by the employees. The benefits provided by the respondents under this scheme were accepted by the petitioner. Since the workman had accepted the scheme and himself had opted to retire under this scheme, he cannot be allowed to approbate or reprobate. In the present case of the petitioner, the employees had accepted all benefits under the Voluntary Retirement Scheme, so they cannot retract from the obligations and exercise their right, integrally connected with the performance of the obligations under the Voluntary Retirement Scheme.*
>
> *In view of the above facts and in view of the principles of law laid down in the above noted case and after accepting offer of huge incentive, they now cannot withdraw their resignation and if their services had come to an end on account of it, they cannot be allowed to raise it in this manner as their grievance. The Hon'ble Apex Court in Special Leave Petition affirmed this judgment. The same principles were laid down by the Hon'ble Apex Court in another case reported in 2004(100) FLR 648, Punjab National Bank Vs. Virendra Kumar Goel and others and AIR 2003 SC 858, Bank of India with other banks Vs. Virendra Kumar Goel and others, wherein it was laid down that retirement was to take effect only after the request was accepted. Such scheme is only an intimation to offer which can be withdrawn before it is accepted contractual bar created under the scheme to withdraw the request once made by employees cannot be made.*

In the present case there is no dispute that the petitioners themselves had approached the scheme and had accepted all the benefits and after accepting all the benefits, after a lapse of long time, had tried to raise this dispute. The Conciliation Officer, in these circumstances for sufficient reasons allowed the application of the petitioners.

I find no merit in these writ petitions. They are fit to be dismissed and are accordingly dismissed with costs."

Against order dated 8.2.2006 Sri Rajendra Singh & others filed a Review Petition No.76 of 2006 (Rajendra Singh & others Vs. M/s. Scooter India Limited & others) which too was dismissed by means of order dated 13.5.2008 which is quoted below:-

"*There appears no error apparent at the face of record. The review petition is dismissed. No order as to costs*."

However, above said facts have been concealed by applicant while filing the present I.D. Case with oblique motive and purpose.

As such, it is rightly submitted on behalf of respondent that present case on the same relief in respect to which earlier claimant's case u/s 2A of the Act was rejected, is barred by the principle of res-judicata.

Further, one Sri Jagdish Chandra Nigam whose case was identical to the case of claimant, filed a Special Appeal No.48 (SB) of 1997, allowed by means of judgment and order dated 18.12.2000 (reported in 2000CJ(All) 309), the relevant portion, quoted below:-

"18. The appeal is allowed. The judgment and order passed by the Hon'ble the single Judge is set aside to the extent, the observations made in the foregoing paragraph of this judgment. But we provide that in case the appellant deposits the entire amount which he has received through cheque dated March 12, 1994 alongwith interest at the rate of 12% with Scooters India Limited, as well as other benefits which might have been given to the appellant within four weeks from the date of production of the certified copy of this order, the appellant will be reinstated in service. But considering the facts and circumstances of the case, we further provide that the appellant will not be entitled for payment of back wages.

19. As far as the case of the petitioners of other writ petitions are concerned, the fact of those writ petitioners are not exactly identical to the facts which have been indicated in the present Special Appeal. But as this Court has decided the present Special Appeal more or less on same propositions of law although the fact might be different, we heard the arguments of the learned counsel for the parties in all the writ petitions alongwith special appeal, which are connected with this special appeal as well.

20. As we have already indicated that those employees who withdrew their application for voluntary retirement before the prospective date mentioned in the original application for voluntary retirement, shall he entitled for the relief. But those persons, who have not withdrawn their voluntary retirement before the prospective date, would not be entitled for any relief.

21. We further provide that those petitioners, who opted for the Voluntary Retirement Scheme from a prospective date and withdrew their resignations before the said prospective date, but were, relieved by the management of the Scooters India Ltd. would be entitled to the relief as Jagdish Chandra Nigam has been provided, provided they filed the writ petitions within one month from the date of the relieving orders. If they had filed the writ petition after one month from the date of relieving orders, they would not be entitled for any relief.

22. With the aforesaid observations, the Special Appeal as well as all the writ petitions are disposed of."

Judgment/order dated 18.12.2000 challenged by way of filing a S.L.P. having Special Leave Petition (Civil) No.10352/2001 (M/s. Scooters India Ltd & others versus Jagdish Chandra Nigam) along with other S.L.P.s which were connected. In the above noted S.L.P. an order dated 12.2.2004 was passed by the Hon'ble Supreme Court which reads as under:-

"*Leave Granted.*

For the reasons stated in our order passed today in C.A. No.4098/2002, this appeal is allowed.

The order and judgment under challenge is set aside. There shall be no order as to costs."

Thus, as per the order passed by the Hon'ble Supreme Court, the S.L.P. filed by M/s. Scooters India Limited was allowed and judgment and order passed in the case of Special Appeal filed by Sri Jagdish Chandra Nigam was set aside/S.L.P. filed by Sri Jagdish Chandra Nigam was dismissed.

Moreover order passed by the Hon'ble Supreme Court in Special Leave Petition (Civil) No.10352/2001 (M/s. Scooters India Ltd & others versus Jagdish Chandra Nigam) based upon order dated 12.2.2004 passed by the Hon'ble Supreme Court in C.A. No.4098 of 2002 (Bank of India & others Vs. Pale Ram Dhania), reproduced below:-

"1. It is not disputed that the appellant Bank introduced a Voluntary Retirement Scheme, 2000 (herein referred to as "the Scheme") for its employees which had the approval of its Board of Directors. The Scheme was operative w.e.f. November 15, 2000 to December 14, 2000 for the employees who sought voluntary retirement. It is not disputed that the respondent herein who was an employee of the appellant Bank sought voluntary retirement under the Scheme on November 30, 2000. It is also not disputed that on December 2, 2000 he wrote to the Bank for withdrawal of his application for voluntary retirement. On January 22, 2001, the appellant Bank accepted the request for voluntary retirement of the respondent. Further, on January 25, 2001, the respondent withdrew the retiral benefits deposited in the Bank in his name as per voluntary retirement. It appears that the respondent changed his mind after the respondent was relieved from the employment and he filed a petition under Article 226 of the Constitution challenging the acceptance of his request for voluntary retirement. A learned Single Judge of the High Court allowed the petition and set aside the acceptance of the application for voluntary retirement submitted by the respondent. Aggrieved, the appellants preferred a letters patent appeal which was dismissed. It is against the said judgment, the appellants are in appeal before us.

2. A Bench of three Judges of this Court in Punjab National Bank v. Virender Kumar Goel , has held that an employee who sought voluntary retirement and subsequently wrote for its withdrawal but has withdrawn the amount of retiral benefits as per the Voluntary Retirement Scheme, is not entitled to the withdrawal of his application for voluntary retirement. It is not disputed that in the present case the respondent herein withdrew the amount of retiral benefits on January 25, 2001.

3. For the aforesaid reason, this appeal deserves to be allowed. We order accordingly. The order and judgment under challenge is set aside. There shall be no order as to costs".

In Review Petition (Civil) No.53 of 2003 arising out of Appeal (Civil) No.896 of 2002 (Punjab National Bank Versus Virender Kumar Goel & others), the Hon'ble Supreme Court on 21.1.2004 passed an order. The relevant of order dated 21.1.2004 reads as under:-

"I.A.NOS. 1-22

These applications have been filed by the State Bank of Patiala for clarification/directions. The ground taken in these applications is that the State Bank of Patiala is not a nationalised bank. It is hundred per cent a subsidiary of the State Bank of India. The VRS scheme floated by the State Bank of Patiala is in para-materia with the scheme floated by the State Bank of India. This Court in the judgment dated 17.12.2002 allowed the appeals filed by the State Bank of India but nothing has been said about the appeals filed by the State Bank of Patiala. In the interregnum, a two-Judge Bench of this Court, in which one of us (Sema, J) was a member, considered the same question in Civil Appeal No. 2341 of 2003 arising out of Special Leave Petition No. 23530 of 2002 entitled State Bank of Patiala Vs. Jagga Singh, disposed of on 13.3.2003, where this Court after considering Clause 8 of the scheme floated by the State Bank of Patiala and Clause 7 of the scheme floated by the State Bank of India, had held that the scheme floated by the State Bank of Patiala is almost identical of the scheme floated by the State Bank of India. Accordingly, the appeal filed by the State Bank of Patiala was allowed. Review Petition was also dismissed on 3.12.2003. In view thereof, we clarify that our direction No.2, allowing the appeals filed by the State Bank of India, would also include the appeals filed by the State Bank of Patiala. In other words, the appeals filed by the State Bank of Patiala are allowed in terms of our judgment dated 17.12.2002. I.A.NOS. 14-15 I.A.No.14 has been filed by an employee of the bank sought to clarify/modify our order dated 17.12.2002. In this case, admittedly, the benefit of the scheme had been withdrawn by the applicant on 27.2.2001. The applicant had clearly admitted, in ground E of the application, withdrawal of the amount so credited in his account, albeit compelling financial constraints.

I.A.No.15 has been filed by an employee of the bank for clarification/modification of our order dated 17.12.2002. In para 6 of the application, the applicant admitted that he had withdrawn and utilised the benefit of the scheme credited in his account.

As noticed in our judgment, having accepted the benefit under the scheme by withdrawing and utilisation thereof they are not permitted to approbate and reprobate."

Moreover Sri J.C. Nigam filed a Review Petition (Civil) No.747 of 2004 in C.A. No.1089 of 2004 (J.C. Nigam Versus M/s. Scooter India Limited & others) before the Hon'ble Supreme Court in which the following order dated 28.4.2004 passed:-

"*We do not filed any merit in the review petition and the same is accordingly dismissed*."

Thereafter, Sri J.C. Nigam filed a Curative Petition No.152 of 2008 against order dated 28.4.2004 passed in Review Petition (Civil) No.747 of 2004 which was dismissed by an order dated 20.1.2009, quoted below:-

"*We have perused the petition and the connected papers. In our view, no case is made out within the parameters indicated in the decision of this Court in Rupa Ashok Hurra Vs. Ashok Hurra & Anr. 2002(4) SCC 388. Hence, the Curative Petition is dismissed*."

In addition to the above said facts, Hon'ble the Apex Court in the constitution bench in the case of ***Rupa Ashok Hurra Versus Ashok Hurra & Anr, reported in 2002(4) SCC 388*** held as under:-

"Incidentally, this Court stands out to be an avenue for redressal of grievance not only in its revisional jurisdiction as conferred by the Constitution but as a platform and forum for every grievance in the country and it is on this context Mr.Shanti Bhushan, appearing in support of the some of the petitioners, submitted that the Supreme Court in its journey for over 50 years has been able to obtain the confidence of the people of the country, whenever the same is required be it the atrocities of the police or a public grievance pertaining to a governmental action involving multitudes of problems. It is the Supreme Court, Mr. Shanti Bhushan contended, where the people feel confident that justice is above all and would be able to obtain justice in its true form and sphere and this is beyond all controversies. It has been contended that finality of the proceeding after an Order of the Supreme Court, there should be, but that does not preclude or said to preclude this Court from going into the factum of the petition for gross injustice caused by an Order of the Supreme Court itself under the inherent power being an authority to correct its errors any other view should not and ought not be allowed to be continued. Needless to record here, however, that review jurisdiction stand foisted upon this Court in terms of the provisions of the Constitution, as noticed hereinbefore and it is also well-settled that a second review petition cannot be said to maintainable. Reference maybe made in this context to a decision of this Court in the case of J.Ranga Swamy v. Govt. of A.P. & Ors. (AIR 1990 SC 535), wherein this Court in paragraph 3 stated as below :-

"We are clearly of the opinion that these applications are not maintainable. The petitioner, who appeared in person, referred to the judgment in Antulay's case (1988) 2 SCC 602 : (AIR 1988 SC 1531). We are, however, of the opinion that the principle of that case is not applicable here. All the points which the petitioner urged regarding the constitutionality of the Government orders in question as well as the appointment of respondent instead of petitioner to the post in question had been urged before the Bench, which heard the civil appeal and writ petitions originally. The petitioner himself stated that he was heard by the Bench at some length. It is, therefore, clear that the matters were disposed of after a consideration of all the points urged by the petitioner and the mere fact that the order does not discuss the contentions or give reasons cannot entitle the petitioner to have what is virtually a second review."

True, due regard shall have to have as regards opinion of the Court in Ranga Swamy (supra), but the situation presently centres round that in the event of there being any manifest injustice would the doctrine of ex debito justitiae be said to be having a role to play in sheer passivity or to rise above the ordinary heights as it preaches that justice is above all. The second alternative seems to be in consonance with time and present phase of socio-economic conditions of the society. Manifest justice is curable in nature rather than incurable and this court would lose its sanctity and thus would belie the expectations of the founding fathers that justice is above all. There is no manner of doubt that procedural law/procedural justice cannot overreach the concept of justice and in the event an Order stands out to create manifest injustice, would the same be allowed to remain in silenco so as to affect the parties perpetually or the concept of justice ought to activate the Court to find a way out to resolve the erroneous approach to the problem. Mr.Attorney General, with all the emphasis in his command, though principally agreed that justice of the situation needs to be looked into and relief be granted if so required but on the same breath submitted that the Court ought to be careful enough to trade on the path, otherwise the same will open up Pandora's box and thus, if at all, in rarest of the rare cases the further scrutiny may be made. While it is true that law courts has overburdened itself with the litigation and delay in disposal of matters in the subcontinent is not unknown and in the event of any further appraisal of the matter by this Court, it would brook on further delay resulting in consequences which are not far to see but that would by itself not in my view deter this Court from further appraisal of the matter in the event the same, however, deserve such an additional appraisal The note of caution sounded by Mr. Attorney as regards opening up of pandora's box strictly speaking, however, though may be of very practical in nature but the same apparently does not seem to go well with the concept of justice as adumbrated in our constitution. True it is, that practicability of the situation needs a serious consideration more so when this Court could do without it for more than 50 years, which by no stretch of imagination can be said to be a period not so short. I feel it necessary, however, to add that it is not that we are not concerned with the consequences of reopening of the issue but the redeeming feature of our justice delivery system, as is prevalent in the country, is adherence to proper and effective administration of justice in stricto. In the event there is any affectation of such an administration of justice either by way of infraction of natural justice or an order being passed wholly without jurisdiction or affectation of public confidence as regards the doctrine of integrity in the justice delivery system technicality ought not to out-weigh the course of justice the same being the true effect of the doctrine of ex debito justitiae. The oft quoted statement of law of Lord Hewart, CJ in R v. Susssex Justices, ex p McCarthy (1924 (1) KB 256) that it is of fundamental importance that justice should not only be done, should manifestly and undoubtedly be seem to be done had this doctrine underlined and administered therein. In this context, the decision of the House of Lords in R v. Bow Street Metropolitan Stipendiary Magistrate and others, ex parte Pinochet Ugarte (No.2) seem to be an

ipoc making decision, wherein public confidence on the judiciary is said to be the basic criteria of the justice delivery system any act or action even if it a passive one, if erodes or even likely to erode the ethics of judiciary, matter needs a further look. Brother Quadri has taken very great pains to formulate the steps to be taken and the methodology therefor, in the event of there being an infraction of the concept of justice, as such further dilation would be an unnecessary exercise which I wish to avoid since I have already recorded my concurrence therewith excepting, however, lastly that curative petitions ought to be treated as a rarity rather than regular and the appreciation of the Court shall have to be upon proper circumspection having regard to the three basic features of our justice delivery system to wit, the order being in contravention of the doctrine of natural justice or without jurisdiction or in the event of there is even a likelihood of public confidence being shaken by reason of the association or closeness of a judge with the subject matter in dispute. In my view, it is now time that procedural justice system should give way to the conceptual justice system and efforts of the law Court ought to be so directed. Gone are the days where implementation of draconian system of law or interpretation thereof were insisted upon - Flexibility of the law Courts presently are its greatest virtue and as such justice oriented approach is the need of the day to strive and forge ahead in the 21st century."

Thus, from the above said facts and the material on record, as the present industrial dispute stands on the same footing as of Sri Jagdish Chandra Nigam, so in view of the judgment passed Hon'ble Supreme Court in the case of Sri Jagdish Chandra Nigam thereafter in Review Petition and Curative Petition, by him which were also dismissed.

Accordingly, preliminary objection taken by learned counsel for respondent are allowed and claim petition filed by claimant liable to be dismissed.

ORDER

For the foregoing reasons the present industrial dispute is dismissed, workman is not entitled for any relief; and the reference is answered accordingly.

Lucknow. Justice ANIL KUMAR, Presiding Officer

06th May, 2024

नई दिल्ली, 19 जुलाई, 2024

का.आ. 1439.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **एम्पलॉईस प्रोविडेंट फण्ड आर्गेनाईजेशन** के प्रबंधतंत्र के संबद्ध नियोजकों और **गोमान्तक मज़दूर संघ** के बीच अनुबंध में निर्दिष्ट **केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, मुंबई, पंचाट (रिफरेन्स न.22/2007)** को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 18.07.2024 को प्राप्त हुआ था।

[सं. एल-42012/142/2005-आईआर(सीएम-II)]

दिलीप कुमार, अवर सचिव

New Delhi, the 19th July, 2024

S.O. 1439.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Reference No. 22 /2007)** of the **Central Government Industrial Tribunal cum Labour Court-2, Mumbai** as shown in the Annexure, in the Industrial dispute between the employers in relation to **Employees Provident Fund Organisation** and **Gomantak Mazdoor Sangh** which was received along with soft copy of the award by the Central Government on 18.07.2024.

[No. L-42012/142/2005-IR(CM-II)]

DILIP KUMAR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

PRESENT

SHRIKANT K. DESHPANDE

Presiding Officer

REFERENCE NO.CGIT-2/22 of 2007

EMPLOYERS IN RELATION TO THE MANAGEMENT OF

REGIONAL PROVIDENT FUND COMMISSIONER-I.

Employees Provident Fund Organisation,

Bhavishya Nidhi Bhawan,

24, Patto Plaza, Panaji,

Goa – 403001 **FIRST PARTY**

AND

THEIR WORKMEN.

The General Secretary,

Gomanatak Mazdoor sangh,

Shetye Sankul, 3rd Floor,

Tisk, Ponda,

Goa **SECOND PARTY**

APPEARANCES:

First Party : Mr. M. N. Rajput
Advocate

Second Party : Mr. P. Gaonkar
Representative

AWARD

(Delivered on 26-06-2024)

This Reference has been made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, vide Government of India, Ministry of Labour & Employment, New Delhi, order No. L-42012/142/2005 – IR (CM-II) dated 12.06.2007. The terms of reference given in the schedule are as follows :

SCHEDULE

"Whether the action of the management of The Employees' Provident Fund Organization, Goa in refusing employment to Smt. Anita Kubal is legal and justified? If not, to what relief is the workman entitled".

2. According to the Second party its union is a registered Trade union of workmen employed in various industries in Goa and the First party is constituted in accordance with the provisions of The Employees' Provident Funds and Miscellaneous Provisions Act, 1952". According to the Second party, workman Smt. Anita Kubal joined the services of First party as clerk in 1987 and worked continuously. Mr. Ganesh Kubal, her husband was 'General Secretary' of staff union, dismissed for union activities on 04-04-1984. He challenged his dismissal therefore workman was harassed by the management and mentally tortured by male staff, however inspite of complaints no action was taken but the staff was protected.

The second party submits that, due to mental torture, the workman was unable to work peacefully therefore she submitted conditional resignation informing the management that, if no action is taken, she has no option except to remain at home however no action was taken nor informed about the fate of resignation therefore the dispute has been raised in 2005. The approach of the management was adamant. Lastly the second party urged that, force resignation from the workman is nothing but illegal termination, thus prays for reinstatement with full back wages of workman by answering the reference in affirmative.

3. The First party resisted the reference by reply. The First party contended that, the second party union is not recognized union of The Employees' Provident Fund Organization therefore no locus-standi to raise the dispute and for want of cause of action, the present reference is not tenable under law and the same is barred by limitation.

In the alternative, the First party submitted that, workman Smt. Anita Kubal joined the organization in 1987, not worked continuously but with break in service. She was in habit of making false allegation against the male workers however she used to refuse to attend the enquiry which was set up on her allegation. She was requested vide letter dated 15-11-2001 to give the names of male staff with proof, but no reply was received. She used to submit resignation occasionally without any reasons on false pleas with a view to put pressure on management. The first party further contended that, resignation tendered by the workman was voluntary on her own free will, consent and not under duress. Moreover she informed that her resignation is voluntarily and later be treated as final notice of resignation as such there is no termination as alleged much less illegal and the workman is not entitled for relief of reinstatement with full back wages as prayed and ultimately prayed that, the reference be answered in the negative.

4. My Learned Predecessor framed the issues. I have re-arranged the same as follows. My Findings and Reasons of them are as below:

Sr. No.	Issues	Findings
1.	Is Reference tenable in the present forum?	Yes.
2.	Does the Second party prove that she was forced to tender resignation?	No.
3.	Does the First party prove that resignation given by Second party was voluntarily?	Yes.
4.	Is Second party entitled for relief sought?	No.
5.	What Order ?	As per Award.

REASONS

5. Issue No. 1- It will not be out of this to mention here that, during proceeding the first party moved an application at Ex.-41 regarding maintainability of the reference for want of Jurisdiction and on that application my Learned Predecessor passed an order stating therein that, the application will be considered on merit as such I am dealing with the aspect of Jurisdiction of the Court.

6. The First party stated in the application that, the Second party wrongly approach to this forum as for the employees of EPFO, Central Administrative Tribunal is the proper forum therefore the present Reference is not tenable under Law.

True, it is that, the workman Smt. Anita Kubal being an employee of the First party her services were governed by the Central Civil Services Rules therefore the Central Administrative Tribunal was the forum available to the second party for her grievance however at the same time the workman being an employee of the Central Government she can approach to this Tribunal also.

It is worthwhile to mention here that, Section 28 of the Central Administrative Tribunal Act, 1985, excludes the Jurisdiction of all Courts, in respect of matters for which, the Tribunal under the Act, exercises the Jurisdiction, except the Supreme Court and the Labour Courts and other authorities under the Industrial Dispute Acts. It means the Jurisdiction of the Labour Court is not barred as such it can be safely said that, this Court being an authority under the Industrial Dispute Acts has concurrent Jurisdiction to decide the grievance of the Central Government Employees therefore the present reference referred by Central Government to this Tribunal is certainly tenable under Law.

7. As regards the limitation, there is no limitation prescribed under the Industrial Dispute Acts for raising an Industrial Dispute and as per the settled position of Law, the dispute raised by the workman cannot be thrown only on the ground of delay. Moreover if the Reference is belated, then at the most such aspect of delay can be considered while granting relief, as such it cannot be said that, the present Reference is barred by the limitation. In short, the Reference as framed is tenable under Law before this forum, hence I answer this issue in the affirmative.

8. **Issue No. 2 & 3-** Both these issues are inter-related therefore answered together. In support of claim the second party examined Puti Govind Gaonkar, General Secretary of the Gomantak Mazdoor Union, whereas the first party has not adduced any oral evidence before the Court and relied the various copies of document filed before the Court alongwith list Ex-17 and all those documents are admitted by the second party therefore exhibited also.

There appears no dispute that, the second party workman Smt. Anita Kubal was the employee of the first party since 1987. Mr. Ganesh Kubal (a husband of workman) was also in the employment of the first party and he was dismissed from service on 04-04-1994. Smt. Anita Kubal, second party workman submitted her resignation however the second party nowhere mentioned in the statement of claim nor in evidence affidavit (Ex-13) about the date, when second party workman submitted her resignation. However the witness of the second party admitted in cross examination that, the workman submitted resignation letter on 01-11-2001.

9. On careful perusal of the documents filed along with list Ex-17 it reveals that, Mrs Anita Kubal submitted resignation on 01-11-2001, the copy of that resignation letter is at (Ex-34). It further reveals that after 01-11-2001 some correspondence was made by the first party with the second party workman and by later dated 24-11-2001 (Ex-31) the second party workman submitted a letter requesting that she is submitting resignation from service and treat it as her final notice and by later dated 21-01-2002 (Ex-32) resignation tendered by Smt A. G. Kubal LDC accepted with effect from 21-01-2002 and she was relieved from duties with effect from 21-01-2002 (afternoon). The second party workman tendered resignation on 01-11-2001, the same was accepted by first party on 21-01-2002 and she was relieved from duty with effect from 21-01-2002.

10. It is contended on behalf of the Second party that, the workman Smt. Anita Kubal was mentally torchered and harassed by the male staff of the First party. This fact was informed to the First party but no action was taken against the staff members. Moreover, the staff members were protected therefore workman Smt. Anita Kubal was forced to resign from service as such the resignation submitted by the workman was forced resignation amounts to termination.

11. I may mention here that considering the allegations made in the resignation letter dated 01-11-2001 (Ex-34) it seems that, the allegations made in the letter are vague in nature. There are no names of person, who harassed mentally to the workman. Not only this but, there is no whisper in the statement of claim nor in the evidence affidavit about the names of male staff, who harassed the workman. It reveals from the letter dated 15-11-2001 (Ex-33) that, the workman Smt. Anita Kubal was asked to submit the names of male staff for necessary action however it reflects from the copy of letter dated 27-12-2001 (Ex-30) that, the workman failed to submit the names of male staff. Similarly by another letter the workman was also requested to submit the names of the staff members however there seems no reply from the workman.

12. It reveals from the case papers that, during proceeding the First party made an application Ex-44 and thereby sought direction from the Court to cross examine the workman Smt. Anita Kubal and after hearing the Parties, my Learned Predecessor by this order dated 13-7-2017 directed the Second party workman Smt. Anita Kubal to appear before the Court for cross examination however it seems that inspite of the order of the Court, the workman did not stepped in the witness box and not subjected herself for cross examination.

In fact, the workman Smt. Alka Kubal was the necessary person to state before the Court about the instances of harassment by the male staff of the First party but as she failed to depose before the Court, the contention regarding the harassment and torchered by male staff cannot be said to be true not only this but, it seems from the letter Ex-31 that, the Second party workman informed to the First party about this resignation and also requested to treat it as final notice.

From the above discussion it is clear that, the Second party failed to prove that, the workman Smt. Anita Kubal was forced to tender her resignation.

13. Furthermore, on plain reading of copy of resignation letter dated 01-11-2001 (Ex-34), the workman Smt. Alka Kubal made allegations against the male staff without giving the names of persons. On the basis of that, the First party attempted to make enquiry but the workman Smt. Alka Kubal did not co-operate and finally the workman by letter Ex-31 requested the First party to accept the resignation, the Second party miserably failed to demonstrate before the Court that, the workman Smt Anita Kubal was forced to resigne from service.

As the Second party fails to prove before the Court that, the workman was forced to resign moreover it seems that, the workman Smt. Anita Kubal tendered resignation making some allegations against male staff without any proof. In enquiry made by the First party she did not appear and lastly workman Smt. Anita Kubal requested to accept the resignation in such circumstances it can be said that, the resignation was not at all conditional or forced but it is voluntarily resignation and the same was accepted. Hence, I answer these issues accordingly:

14. Issue No. 4- I have observed earlier that, the Second party failed to prove that, the workman Smt. Anita Kubal was forced to tender resignation and the resignation tendered by Smt. Anita Kubal was not forced the same was voluntarily resignation and it does not amount to termination, therefore the Second party is not entitled for relief sought. Hence I answer this issue in the negative.

In the result I proceed to pass the following Award-

AWARD

1. The Reference is answered in negative.
2. The Second party is not entitled for relief as prayed.
3. No order as to cost.

4. The copy of Award be sent to the Government.

Date: 26-06-2024 SHRIKANT K. DESHPANDE, Presiding Officer

नई दिल्ली, 19 जुलाई, 2024

का.आ. 1440.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **मेसर्स ओएनजीसी लिमिटेड** के प्रबंधतंत्र के संबद्ध नियोजकों और **महाराष्ट्र संघटित असंघटित कामगार सभा** के बीच अनुबंध में निर्दिष्ट **केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, मुंबई, पंचाट (रिफरेन्स न. 63/2018)** को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 18.07.2024 को प्राप्त हुआ था।

[सं. एल - 30011/31/2018-आईआर (एम)]

दिलीप कुमार, अवर सचिव

New Delhi, the 19th July, 2024

S.O. 1440.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Reference No. 63 /2018)** of the **Central Government Industrial Tribunal cum Labour Court-2, Mumbai** as shown in the Annexure, in the Industrial dispute between the employers in relation to **M/s ONGC Limited** and **Maharashtra Sanghatit Asanghatit Kamgar Sabha** which was received along with soft copy of the award by the Central Government on 18.07.2024.

[No. L-30011/31/2018-IR (M)]

DILIP KUMAR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

PRESENT

SHRIKANT K. DESHPANDE

Presiding Officer

REFERENCE NO.CGIT-2/63 of 2018

EMPLOYERS IN RELATION TO THE MANAGEMENT OF

M/s ONGC Ltd.

The Deputy General Manager(HR)-IR,
M/s ONGC Ltd, NBP Green Heights,
Q.No. 1,4th Floor, Plot No. C-69,
Bandra Kurla Complex, Bandra (E),

AND

THEIR WORKMEN.

The General Secretary,
Maharashtra Sanghatit Asanghatit
Kamgar Sabha,
30, Shree Building, 2nd Floor, Ranade Road,
Dadar (W), Mumbai – 400028.

APPEARANCES:

FOR THE EMPLOYER	:	Mr P.A. Deogaonkar Advocate
FOR THE WORKMAN	:	Mr. Suryakant Bagal Representative

AWARD

(Delivered on 28-06-2024)

1. This reference has been made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, vide Government of India, Ministry of Labour & Employment, New Delhi, order No. L-30011/31/2018 – IR (M) dated 26.11.2018. The terms of reference given in the schedule are as follows :

"Whether the action of the management of ONGC Ltd., Mumbai over deduction of Rs. 60,000/- from the wages of contract labourers is proper, legal and justified? If not, what reliefs the workmen are entited to? What directions, if any, are required in the matter?

2. Read joint application Ex-6 signed by the General Secretary of the Maharashtra Sanghatit Asanghatit Kamgar Sabha and advocate of the First party. Heard Mr. Suryakant Bagal representative for Second party and Mr. P. A. Deogaonkar Advocate for the First party.

It appears that, the Second Party Union has settled all the disputes including present dispute out of the Court with the First Party and therefore the Second Party does not want prosecute this Reference further. This fact is also corroborated by the Council for the Opponent present before the Court. In view of this the Reference is disposed of as settled. No Order as to cost. Proceeding is closed.

ORDER

1. The Award is answered in the negative.
2. The Second Party Union is not entitled for any relief.
3. No Order as to cost.
4. The copy of the Order be sent to the Government.

Date: 28-06-2024 SHRIKANT K. DESHPANDE, Presiding Officer

नई दिल्ली, 19 जुलाई, 2024

का.आ. 1441.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **मेसर्स राजस्थान स्टेट माईन्स एंड मिनरल लिमिटेड** के प्रबंधतंत्र के संबद्ध नियोजकों और **आर.एस.एम.एम. मज़दूर महासंघ** के बीच अनुबंध में निर्दिष्ट **केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर, पंचाट (रिफेरेंस न. 21/2008)** को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 18.07.2024 को प्राप्त हुआ था।

[सं. एल - 29011/29/2005-आईआर (एम)]

दिलीप कुमार, अवर सचिव

New Delhi, the 19th July, 2024

S.O. 1441.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(I.D. No. 21/2008)** of the **Central Government Industrial Tribunal cum Labour Court, Jaipur** as shown in the Annexure, in the Industrial dispute between the employers in relation to **M/s Rajasthan State Mines and Minerals Limited** and **R.S.M.M. Mazdoor Mahasangh** which was received along with soft copy of the award by the Central Government on 18.07.2024.

[No. L-29011/29/2005-IR (M)]

DILIP KUMAR, Under Secy.

अनुलग्नक

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर

पीठासीन अधिकारी

राधा मोहन चतुर्वेदी

सी.जी.आई.टी. प्रकरण सं.– 21/2008

Reference No. L-29011/29/2005-IR (M) Dated: 13.05.2008

जनरल सेक्रेटरी, आर.एस.एम.एम. मजदूर महासंघ, 136 गणपति–कृपा, चोतीना कुंआ, बीकानेर, ...प्रार्थी

बनाम

1. दी चेयरमेन, मैसर्स राजस्थान स्टेट माईन्स एण्ड मिनरल लि., खनिज भवन, सी. स्कीम, जयपुर, (राज.)।
2. मैनेजिंग, डायरेक्टर, मैसर्स राजस्थान स्टेट माईन्स एण्ड मिनरल लि., 4, मीरा मार्ग, उदयपुर, (राज.)।

.....अप्रार्थीगण/विपक्षी

उपस्थितः–

: श्री एम. फारूख. बेग, अभिभाषक प्रार्थी।

: श्री राजेश मीणा, अभिभाषक –विपक्षीगण।

: **अधिनिर्णय** :

दिनांक : 11.06.2024

1. श्रम मंत्रालय भारत सरकार नई दिल्ली द्वारा दिनांक 13.05.2008 को औद्योगिक विवाद अधिनियम 1947 (जिसे आगे मात्र अधिनियम कहा जावेगा) की धारा 10 (1) (डी) व 2। के अन्तर्गत प्रदत्त शक्तियो के अनुसरण में निम्नांकित औद्योगिक विवाद न्यायनिर्णयन हेतु इस अधिकरण को संदर्भित किया गया :–

"Whether the demand of the RSMM Mazdoor Mahasangh that the Sahayaks should be given the scale of Rs. 4370/- instead of Rs. 4165/- is justified? If so, to what relief the workmen are entitled?"

2. प्रार्थी की ओर से दिनांक 04.11.2009 को दावे का अभिकथन प्रस्तुत करते हुये यह कहा गया है कि प्रार्थी यूनियन एक रजिस्टर्ड श्रमिक संघ है तथा अप्रार्थी प्रबंधकगण के अधीन कार्यरत सहायक प्रार्थी यूनियन के सदस्य है। प्रार्थी यूनियन ने सहायक के पद पर कार्यरत सहायकों को 4165/–रू. के वेतनमान के स्थान पर 4370/–रू. के वेतनमान में वेतन दिलाये जाने की मॉग की। इस संबंध में विपक्षीगण के यहॉ प्रार्थी ने एक मॉग पत्र भी भेजा था। राजस्थान स्टेट मिनरल डवलेपमेन्ट कोर्परेशन लि. (जिसे संक्षेप में RSMDC कहा जावेगा) तथा राजस्थान स्टेट माईन्स एण्ड मिनरल लि. (जिसे आगे RSMM कहा जावेगा) का समामेलन दिनांक 20.02.2003 को हो चुका है। दोनों संस्थानों में कार्यरत कर्मचारियों के कार्य और वेतन में समरूपता होनी चाहिये। RSMM और RSMDC के विलय के समय कर्मचारियों के वेतनमान एवं पद के लिये श्री आर. जे. मजीठिया एवं एस. एस. परनामी सेवा निवृत्त IAS अधिकारियों की एक कमिटी का गठन किया गया था। विपक्षीगण के अधिकारियों ने भी इस आशय का सुझाव दिया था कि कर्मचारियों को प्रथम नियुक्ति के आधार पर समान पद पर समान वेतन दिया जावे। RSMDC के सहायक कर्मचारियों को मजदूर, हेल्पर, सीनियर हेल्पर का पदनाम दिया जा रहा है। RSMM में मजदूर व स्वीपर की नियुक्ति केटेगरी नं. 1 में तथा पीओन चौकीदार और हेल्पर की नियुक्ति केटेगरी नं. 2 में की जाती है। प्रार्थी यूनियन यह मॉग करती है कि RSMM और RSMDC के विलय के बाद कार्यरत पीओन कम चौकीदार एवं सहायक कम चौकीदार दोनों का काम समान होने के कारण वेतनमान एवं पदोन्नती के अवसर समान किये जावे। द्विपक्षीय समझौता दिनांक 09.07.2003 एवं 18.08.2004 प्रार्थी को स्वीकार नहीं है। अतः वाद स्वीकार किया जाकर विपक्षीगण के अधीन सहायक के पद पर कार्यरत श्रमिकों को उनके समकक्ष कार्यरत कर्मचारियों को वेतन श्रृंखला 4370/– में जो वेतन दिया जा रहा है उसी वेतनमान में वेतन दिया जावे। अर्थात 4165/–रू. वेतन श्रृंखला के स्थान पर 4370/–रू. वेतन श्रृंखला में वेतन स्थरीकृत करते हुये वेतन का अंतर दिलाया जावे।

3. विपक्षीगण की ओर से दिनांक 27.11.2011 को वादोत्तर प्रस्तुत करते हुये यह कहा गया है कि प्रार्थी महासंघ संस्थान द्वारा मान्यता प्राप्त नहीं है। यह संघ संस्थान के बहुसंख्यक श्रमिकों का प्रतिनिधित्व नहीं करता। इसलिए श्रमिकों की सामान्य मॉग

को उठाने को अधिकृत नहीं है। विपक्षी संस्थान के बहुसंख्यक श्रमिकों का प्रतिनिधित्व करने वाले मान्यता प्राप्त संघ RSMML वर्कर्स फेडरेशन (इंटक) के साथ समझौता दिनांक 09.07.2003, जिसमें श्री करणी लाल शर्मा भी उपस्थित थे के अंतर्गत RSMM और RSMDC कामगारों का वेतन समानीकरण किया जाकर ट्रैडक्ब के कामगारों द्वारा विकल्प दिये जाने के उपरांत उन्हें RSMM के कामगारों को देय वेतन भत्ते एवं अन्य सुविधाये प्रदान की जाकर लाभ दिया जा चुका है। जो कर्मचारी RSMM के वेतन भत्ते और सुविधाये नहीं चाहते थे उनको RSMDC के वेतन भत्ते पद एवं सुविधाये जारी रखने का विकल्प खुला हुआ था। श्री आर. जे. मजीठिया एवं एस. एस. परनामी की कमेठी का गठन किया गया था परंतु उसके बाद समझौता दिनांक 09.07.2003 प्रबंधन और श्रमिकों के बीच हो गया जो लागू भी हो चुका है। मजीठिया कमेठी की सिफारिशों को मानने के लिए प्रबंधन बाध्य नहीं था। संस्थानों के विलय के बाद किसी भी कर्मचारी को पीओन एवं चौकीदार का पद नहीं दिया गया चूकिं समझौते के अनुरूप दिये गये लाभों से सभी कर्मचारी लाभान्वित हो चुके है। इसलिये प्रार्थी कोई अनुतोष पाने का अधिकारी नहीं है।

4. दिनांक 12.05.2011 को प्रार्थी की ओर से वादोत्तर के प्रति अतिरिक्त कथन प्रस्तुत किये गये और वादोत्तर के तथ्यों को अस्वीकार किया गया। और पुनः वाद स्वीकार करने का आग्रह किया गया।

5. प्रार्थी ने अपने साक्ष्य में श्री चिरंजी लाल शर्मा व श्री करणी लाल शर्मा को परीक्षित किया तथा प्रलेखीय साक्ष्य में प्रदर्श W-1 से प्रदर्श W-14 तक प्रलेखों को प्रदर्शित किया।

6. विपक्षीगण ने अपने साक्ष्य में श्री पन्नालाल कुमावत एवं श्री हरीश कुमार व्यास को परीक्षित किया। प्रलेखीय साक्ष्य में प्रदर्श M-1 से प्रदर्श M-5 तक प्रलेखों को प्रदर्शित किया।

7. दिनांक 07.09.2017 को विपक्षीगण की ओर से अपने लिखित तर्क प्रस्तुत किये गये जिनकी प्रति प्रार्थी पक्ष को उपलब्ध करायी गई। प्रार्थी पक्ष ने दिनांक 08.04.2019 को अपने लिखित तर्क प्रस्तुत किये जिनकी प्रति विपक्षीगण को दी गई। तदुपंरात उभयपक्ष मौखिक बहस हेतु स्थगन लेते रहे। दिनांक 01.05.2024 को उभयपक्ष ने अधिकरण से निवेदन किया कि चूकि दोनों ही पक्ष लिखित तर्क प्रस्तुत कर चुके हैं इसलिए मौखिक तर्क नहीं करना चाहते।

8. मैंने उभयपक्ष के लिखित तर्को का ध्यान पूर्वक मनन किया एवं उपलब्ध साक्ष्य तथा विपक्षी की ओर से प्रस्तुत न्यायिक दृष्टांतो में पारित विधि पर मनन किया।

9. प्रार्थी ने अपने लिखित तर्को में यह कहा है कि समान कार्य एवं समान वेतन के सिद्वांत के आधार पर RSMDC के कर्मचारियों के वेतन और भत्ते जो कि RSMM के कर्मचारियों से न्यूनतर है, वही होने चाहिये जो RSMM के कर्मचारियों के हैं। RSMDC और RSMM दोनों का समामेलन हो जाना स्वीकृत तथ्य है। RSMM के सहायक/चौकीदार (पीओन) का वेतनमान 4370/– था जबकि RSMDC के सहायक/चौकीदार को वेतनमान 4165/– दिया गया। RSMDC के सहायको के कार्य की प्रकृति पीओन की तरह थी और ये माईन्स में कार्यरत मजदूर नहीं थे। विलय के बाद RSMM ने भी इनसे कार्यालय में ही कार्य लिया। दिनांक 09.07.2003 को हुये समझौते में सहायको के संबंध में निर्णय बाद में होना तय किया गया था। दिनांक 18.08.2004 के समझौते के अंतर्गत जो वेतन और पदनाम दिये जा रहे है, वे गलत है। ये समझौता त्रिपक्षीय नहीं है, न ही श्रम विभाग में पंजीकृत है। इस पर सभी संबंधित व्यक्तियों के हस्ताक्षर भी नहीं है। विपक्षी के साक्षी श्री पन्नालाल ने RSMDC के सहायक तथा RSMM के पीओन के कार्य की प्रकृति एक सी होना स्वीकार किया है, और प्रार्थी संघ को पंजीकृत संघ होना भी माना है। श्री करणीलाल शर्मा से दबाव डालकर विकल्प पर हस्ताक्षर करवाये गये। क्योंकि प्रबंधन ने यह कहा कि विकल्प पत्र नहीं देगें, तो वेतन नहीं मिलेगा। वर्कर्स फेडरेशन की मान्यता मात्र दो वर्ष के लिये थी जो समझौते के समय समाप्त हो चुकी थी। अतः दावा स्वीकार किया जावे।

10. विपक्षी की ओर से लिखित तर्को में यह कहा गया है कि RSMDC और RSMM के विलय के समय मान्यता प्राप्त संघ एवं प्रबंधन के मध्य हुये समझौते दिनांक 09.07.2003 के अनुसार दोनों संस्थानों के कामगारों द्वारा स्वेच्छा से प्रस्तुत विकल्प पत्र के आधार पर समानीकरण किया जा चुका है। इसके अतिरिक्त उक्त समझौते के क्रम में मान्यता प्राप्त संघ के साथ हुये समझौते दिनांक 18.08.2004 के अनुरूप सहायक कर्मचारियों के पदनाम एवं पदोन्नति के अवसर सृजित किये गये है। प्रार्थी संघ विपक्षी संस्थान द्वारा मान्यता प्राप्त नहीं है और संस्थान के बहुसंख्यक श्रमिकों का प्रतिनिधित्व नहीं करता इसलिए वह श्रमिकों की सामान्य मॉग उठाने का अधिकार नहीं रखता है। समझौता दिनांक 09.07.2003 पर श्री करणी लाल शर्मा भी हस्ताक्षर करने वालों में थे और उन्होने अपना विकल्प देकर RSMM के कामगारों को देय वेतन भत्ते और सुविधाये प्राप्त कर ली। प्रदर्श M-3 और प्रदर्श M-4 आदेशों द्वारा न्यायालय निशक्त जन आयुक्त ने भी प्रार्थी संघ की मॉग को उचित नहीं माना है। उन्होनें अपने तर्क के समर्थन में निम्नाकिंत न्यायिक दृष्टांत प्रस्तुत कियेः–

1. ट्रान्सपोर्ट एण्ड डॉक वर्कर्स यूनियन व अन्य बनाम मुम्बई पोर्ट ट्रस्ट व अन्य (2011) 1 SCC (L&S) 566.

2. हरबर्ट संस लिमिटेड बनाम द वर्कमेन ऑफ हरबर्ट संस लि. व अन्य 1977 SCC (L&S) 48.

3. अशोक व अन्य बनाम महाराष्ट्र स्टेट ट्रान्सपोर्ट कोर्प. व अन्य LLJ II 1997, 1189 (बम्बई)

4. स्टेट ऑफ वेस्ट बंगाल बनाम सुभाष कुमार चटर्जी व अन्य (2011) 1 SCC (L&S) 785

11. मैंने उभयपक्ष के लिखित तर्को उपलब्ध साक्ष्य एवं निर्णयों में पारित विधि पर मनन किया। इस विवाद में निम्नलिखित विचारणीय बिन्दु उत्पन्न हुये हैः–

12. **विचारणीय बिन्दुः–**

1. क्या सहायक एवं पीओन दोनों के कार्य, क्षमता, योग्यता एवं कार्यानुभव समान हैं, इसलिए पीओन/चौकीदार एवं सहायक के पद और वेतनमान में किसी भी प्रकार अंतर नहीं होना चाहिये?

.....प्रार्थी

2. क्या प्रार्थी यूनियन विपक्षी संस्थान द्वारा मान्यता प्राप्त नहीं है। इसलिए श्रमिकों की मॉग उठाने को अधिकृत नहीं है?

.....विपक्षी

3. क्या मान्यता प्राप्त श्रमिक संघठन के साथ दिनांक 09.07.2003 को उभयपक्ष के बीच हुये समझौते के अंतर्गत RSMM एवं RSMDC कामगारों का वेतन समानीकरण कर, RSMDC के कामगारों से विकल्प लिये जाने के बाद उन्हें देय वेतन भत्ते व सुविधाये प्रदान कर लाभ दिया जा चुका है। इसलिए उभयपक्ष समझौते की शर्तो से आबद्ध हैं। तथा यह समझौता सहायकों के वेतन–मान संबंधी विवाद पर प्रभावी है?

.....विपक्षी

4. अनुतोषः–

13. उपर्युक्त बिन्दुओ में से बिन्दु संख्या– 1 सहायक एवं पीओन दोनों को ही समान वेतन दिये जाने से संबंधित है। विपक्षी के अनुसार इस संबंध में दिनांक 09.07.2003 को मान्यता प्राप्त श्रमिक संघ एवं विपक्षी के बीच हुये समझौते के प्रावधानों से यह विवाद आच्छादित है, जिससे दोनों ही पक्ष आबद्ध हैं। समझौते के आधार पर श्रमिक लाभ भी प्राप्त कर चुके हैं इसलिए यह वाद स्वीकार्य नहीं है। इस स्थिति में यह उपयुक्त प्रतीत होता है कि विचारणीय बिन्दु संख्या– 3 पर ही प्रथम विनिश्चय पारित किया जावे, तथा शेष बिन्दुओं का विनिश्चय इस बिन्दु के निर्णय पर निर्भर करे। विचारणीय बिन्दु संख्या– 3 पर विवेचित निष्कर्ष इस प्रकार है।

14. **विचारणीय बिन्दु सं. 3–**

15. विपक्षी का यह तर्क है कि RSMDC एवं RSMM के विलय के समय मान्यता प्राप्त संघ एवं प्रबंधन के बीच समझौता दिनांक 09.07.2003 को हुआ। इस समझौते के अनुसरण में दोनों संस्थान के कामगारों द्वारा स्वेच्छा से प्रस्तुत विकल्प पत्रों के आधार पर समानीकरण किया जा चुका है। दिनांक 18.08.2004 को RSMM वर्कर्स फेडरेशन (इंटक) व प्रबंधन के साथ हुआ समझौता लागू कर दिया गया है। विपक्षी साक्षी श्री पन्ना लाल कुमावत एवं श्री हरीश कुमार व्यास ने अपने कथनों में इसी तथ्य को पुष्ट करते हुये यह कहा है कि सहायकों के संबंध में दिनांक 09.07.2003 को समझौता हो चुका था इसलिए कामगारों से विकल्प पत्र भरवाया गया। समझौते में सहायको के संबंध में बाद में निर्णय लेने का जो उल्लेख किया गया है वह केवल पदनाम के निराकरण से संबंधित है।

16. साक्षी श्री पन्नालाल ने अपने प्रतिपरीक्षण में यह कहा है कि विलय के समय RSMM वर्कर्स फेडरेशन (इंटक) मान्यता प्राप्त नहीं थी। साक्षी ने यह भी स्वीकार किया है कि समझौता दिनांक 09.07.2003 व 18.08.2004 त्रिपक्षीय समझौते नहीं थे। तथा पंजीकृत भी नहीं थे।

17. इस संबंध में प्रार्थी साक्षी श्री चिरंजी लाल ने अपने प्रतिपरीक्षण में यह स्वीकार किया है कि प्रदर्श M-5 एग्रीमेन्ट दिनांक 09.07.203 को हुआ था जो मान्यता प्राप्त बहुसंख्यक यूनियन के साथ हुआ था। इस एग्रीमेन्ट के समय श्री करणी लाल शर्मा जनरल सेक्रेटरी भी मौजूद थे। तथा एग्रीमेन्ट पर इनके हस्ताक्षर भी है। प्रदर्श M-5 समझौते के साथ Annexure- A के रूप में Proposed Equivalence of Pay Scale of Workers संलग्न है।

18. प्रार्थी साक्षी श्री करणी लाल शर्मा ने अपनी मुख्य परीक्षा में कहा है कि दिनांक 09.07.2003 को हुआ समझौता त्रिपक्षीय नहीं था। इसके पहले के सभी समझौते त्रिपक्षीय करार के माध्यम से किये गये थे। यह समझौता भी क्षेत्रीय श्रम आयुक्त के साथ होना चाहिये था। इस समझौते को रजिस्टर्ड भी नहीं करवाया गया। इस समझौते में तो श्रमिक संघ ने कंपनी के नियम से भी

कम का, कामगार–विरोधी समझौता किया। किंतु प्रतिपरीक्षा में यह स्वीकार किया है कि दिनांक 09.07.2003 को मान्यता प्राप्त यूनियन एवं मेनेजमेंट के बीच सेटलमेंट हुआ था जिसमें वह स्वयं भी मौजूद था तथा जिसमें उसके हस्ताक्षर भी है। सेटलमेंट के अधीन उनसे विकल्प पत्र भरवाये गये थे जो Annexure- B है। यद्वपि करणी लाल शर्मा कहते है कि यह विकल्प दवाब में दिया गया था लेकिन साथ ही यह भी स्वीकार करते है कि विकल्प पत्र के अंतिम पैरा में यह लिखा है कि विकल्प बिना किसी दवाब के, वह स्वेच्छा से दे रहे है। यह बात सही है। साक्षी यह भी स्वीकार करता है कि यह समझौता क्रियान्वित हुआ है। समझौते पर स्वयं के हस्ताक्षर होना स्वीकार करते हुये श्री करणी लाल का कथन है कि सहायको के संबंध में निर्णय बाद में लिये जाने का समझौता हुआ था। इस प्रकार प्रार्थी यूनियन के पदाधिकारी श्री करणी लाल शर्मा द्वारा दिनांक 09.07.2003 को मान्यता प्राप्त श्रमिक संघ, जिसके साथ बहुसंख्यक श्रमिक थे, एवं प्रबंधन के बीच समझौता सम्पन्न होना स्वीकार किया गया है। इस समझौते के पैरा संख्या 9.0 में समझौते के प्रर्वतन के संबंध में प्रावधान भी किये गये है। जिसमें स्पष्ट लिखा हुआ है कि समझौता उन्हीं कामगारों पर लागू होगा जो अपनी लिखित स्वीकृति दिनांक 31.07.2003 के पूर्व दे देगें और जो समझौते को स्वीकार न करते हुये विकल्प नहीं देगें वो तत्समय लागू प्रावधानों से शासित होगें। इसी पैरा में यह भी लिखा हुआ है कि समझौते के संबंध में यदि कोई विवाद किसी बिन्दु पर उत्पन्न हो तो वह प्रबंधन और श्रमिक संगठन के मध्य संयुक्त रूप से निस्तारित कर लिया जावेगा। इस प्रकार यह स्पष्ट हो जाता है कि प्रार्थी श्रमिक संघठन के पदाधिकारी श्री करणी लाल शर्मा द्वारा समझौते को स्वीकार करते हुये अपना विकल्प पत्र प्रबंधन के समक्ष प्रस्तुत किया गया था, जो बिना किसी दवाब अथवा अनुचित प्रभाव के किया गया।

19. माननीय सर्वोच्च न्यायालय ने अपने निर्णय ट्रान्सपोर्ट एण्ड डॉक वर्कर्स यूनियन व अन्य बनाम मुम्बई पोर्ट ट्रस्ट व अन्य में यह अवधारित किया है कि समझौते की शर्तो को खुली आंखो से स्वीकार कर लेने के उपरांत, यह अर्थ निकाला जा सकता है कि समझौता स्वीकार करने वालो को उस पर कोई आपत्ति नहीं है।

20. माननीय उच्चतम न्यायालय ने अपने निर्णय हरबर्ट संस लिमिटेड बनाम द वर्कमेन ऑफ हरबर्ट संस लि. व अन्य में यह कहा है कि जब एक मान्यता प्राप्त श्रम संगठन नियोजक से कोई समझौता वर्ता करे तो कोई कामगार व्यक्तिगत रूप से उसमें सम्मिलित नहीं होता। समझौते को पूर्णता के साथ ही स्वीकार किया जा सकता है। जब एक श्रमिक संगठन जिसे बहुसंख्यक श्रमिकों का समर्थन प्राप्त हो प्रबंधन के साथ कोई समझौता करें तो न्यायालय ऐसे समझौतो में कोई हस्तक्षेप करने को अग्रसर नहीं हो सकता।

21. माननीय बम्बई उच्च न्यायालय की खण्ड पीठ ने अपने निर्णय अशोक व अन्य बनाम महाराष्ट्र स्टेट ट्रान्सपोर्ट कोर्प. व अन्य में यह मार्गदर्शन दिया है कि जब समझौते के अंतर्गत कामगार लाभों को स्वीकार कर चुके हो तो ऐसे समझौते को चुनौती देने के लिये कामगार अधिकृत नहीं हैं। कामगारो को यह अधिकार नहीं है कि वह समझौते के किसी भी प्रावधान को स्वीकार करने के बाद कुछ प्रावधानों को अनुचित एवं अवैध कहें। प्रबंधन और मान्यता प्राप्त श्रमिक संघ के मध्य हुये समझौते को वैध ही माना जायेगा चाहे उसका कोई खण्ड, वेतन भुगतान अधिनियम के विपरीत ही क्यो न हो।

22. उपर्युक्त निर्णयों में पारित विधि के प्रकाश में यह प्रकट होता है कि दिनांक 09.07.2003 को बहुसंख्यक श्रमिकों के समर्थन युक्त एवं मान्यता प्राप्त श्रमिक संगठन तथा प्रबंधन के बीच दिनांक 09.07.2003 को हुये समझौते को स्वीकार करते हुये प्रार्थी संघ ने समझौते के अंतर्गत अपना विकल्प भी प्रस्तुत करते हुये समझौते के अनुरूप प्राप्त होने वाले लाभ/परिलाभों को प्राप्त किया। समझौते के अंतर्गत यद्यपि यह प्रावधान किया गया कि सहायक अपने वर्तमान पदनाम के अंतर्गत कार्य करते रहेगें और उनका पदनाम उचित समय के अंतर्गत उनकी योग्यता, दक्षता और नियुक्ति स्थान के आधार पर निर्धारित किया जायेगा। यदि समझौते से संबंधित कोई भी विवाद होगा तो प्रबंधन और श्रमिक संघ संयुक्त रूप से उसका निराकरण कर सकेगें। समझौते के अंतर्गत चूकिं प्रार्थी संघ के पदाधिकारी अपना विकल्प देने के उपरांत लाभान्वित हो चुके है, इसलिए समझौते की किसी भी शर्त एवं प्रावधान को चुनौती देने से प्रार्थी पक्ष अब विबंधित है। उभयपक्ष समझौता दिनांक 09.07.2003 की शर्तो से आबद्ध प्रमाणित होते है। अतः यह बिन्दु विपक्षी के पक्ष में निर्णीत किया जाता है।

23. उपर्युक्त बिन्दु के अंतर्गत चूकिं दिनांक 09.07.2003 को हुये समझौते के प्रावधान से उभयपक्ष आबद्ध प्रमाणित हुये हैं, इसलिए विचारणीय बिन्दु 1 व 2 जिसमें सहायक एवं पीओन के वेतनमानों में समानता अथवा अंतर का बिन्दु विचारणीय था, पर साक्ष्य का कोई विवेचन अपेक्षित नहीं है। इसी प्रकार प्रार्थी यूनियन द्वारा श्रमिकों की मॉग प्रस्तुत करने की अधिकारिता पर भी कोई विनिश्चय पारित किया जाना आवश्यक एवं उचित नहीं है।

24. <u>अनुतोषः–</u>

25. चूकिं उभयपक्ष दिनांक 09.07.2003 को सम्पन्न हुये द्विपक्षीय समझौते से आबद्ध प्रमाणित हुये हैं, दोनों ही पक्ष इस समझौते के प्रावधानों का अनुपालन करने के दायित्वाधीन हैं। यदि कोई विवाद, किसी बिन्दु अथवा प्रावधान के संबंध में उत्पन्न होता भी है तो उसका निराकरण उभयपक्ष संयुक्त रूप से विचार विमर्श द्वारा करने को स्वतंत्र हैं। प्रार्थी विपक्षीगण से इस प्रकार कोई अनुतोष पाने का अधिकारी नहीं है।

26. श्रम मंत्रालय भारत सरकार द्वारा संदर्भित विवाद को इसी प्रकार न्याय निर्णीत किया जाता है।

27. अधिनिर्णय की प्रतिलिपि समुचित सरकार को अधिनियम, की धारा 17 (1) के अंतर्गत प्रकाशनार्थ प्रेषित की जावें।

राधा मोहन चतुर्वेदी, पीठासीन अधिकारी

नई दिल्ली, 19 जुलाई, 2024

का.आ. 1442.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **रिलायंस निप्पोन लाइफ इन्सुरेंस; एक्सप्रेस हाउस कीपर्स प्राइवेट लिमिटेड** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री ओमप्रकाश शर्मा और श्री धर्मवीर** के बीच अनुबंध में निर्दिष्ट **केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली, पंचाट (रिफरेन्स न. 212 & 213/2019)** को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 18.07.2024 को प्राप्त हुआ था।

[सं. जेड - 16025/04/2024-आईआर (एम)-80]

दिलीप कुमार, अवर सचिव

New Delhi, the 19th July, 2024

S.O. 1442.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Reference No. 212 & 213/2019)** of the **Central Government Industrial Tribunal cum Labour Court-2, New Delhi** as shown in the Annexure, in the Industrial dispute between the employers in relation to **Reliance Nippon Life Insurance; Express House Keepers Private Limited** and **Shri Omprakash Sharma and Shri Dharamveer** which was received along with soft copy of the award by the Central Government on 18.07.2024.

[No. Z-16025/04/2024-IR (M)-80]

DILIP KUMAR, Under Secy.

ANNEXURE

BEFORE HONB'LE PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL CUM-LABOUR COURT NO-II, ROUSE AVENUE DISTRICT COURT COMPLEX, I.T.O., NEW DELHI–110002.

I.D. No.212/2019

Sh. Omprakash Sharma,

S/o Late Sh. Laxmi Narayan Sharma,

R/o–House No.214, Dichaon Enclave,

Nangloi Road, Najafgarh, New Delhi–110043. …Applicant/Claimant

I.D. No.213/2019

Sh. Dharamvir, S/o Late Sh. Singh Ram,

R/o–House No.303, Badi Chopal Wali Gali,

Auchandi, New Delhi–110039. …Applicant/Claimant

Through–Sh. Santosh Singh, Advocate,

Chamber No.L–8, K.L. Sharma Block, Gate No.2,

Tis Hazari Court, New Delhi–110054.

VERSUS

1. **Reliance Nippon Life Insurance,**
   Chamber No.5, 2nd Floor, Local–II, Aggarwal Cyber Plaza,
   N.S.P., Pitampura, New Delhi–110034.
2. **Express House Keepers Pvt. Ltd.,**
   R/o –C–7, Nav Shakti Apartment, M.G. Road,
   Ghitorni, New Delhi–110030. … Managements/Respondents

AWARD DATED : 14.05.2024

Item No.- 39 & 40

ID No.- 212/2019 & 213/2019

14.05.2024

Present:

Sh. Santosh, Ld. AR with the workmen.

None for the management.

These are the two cases filed by the different workman against the same management. Having common respondents and same cause of action, these cases are taken together for purpose of recording the proceedings.

Record perused. Counsel of the workmen submits that both the workmen want to withdraw their cases and made prayer that they be given liberty to file the same before the tribunal of appropriate government.

In view of the above submission made by AR of the claimant, these claims stand dismissed as withdrawn. Awards are accordingly passed. Copies of these awards are sent to appropriate government for notification under section 17 of the I.D. Act. Files are consigned to record room.

Date 14th May, 2024 ATUL KUMAR GARG, Presiding Officer

नई दिल्ली, 19 जुलाई, 2024

का.आ. 1443.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **एलआईसी ऑफ़ इंडिया** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री डी. रमेश** के बीच अनुबंध में निर्दिष्ट **केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद, पंचाट (रिफरेन्स न. 82/2014)** को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 18.07.2024 को प्राप्त हुआ था।

[सं. एल - 17012/59/2013-आईआर (एम)]

दिलीप कुमार, अवर सचिव

New Delhi, the 19th July, 2024

S.O. 1443.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Reference No. 82/2014)** of the **Central Government Industrial Tribunal cum Labour Court, Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **LIC of India** and **Shri D. Ramesh** which was received along with soft copy of the award by the Central Government on 18.07.2024.

[No. L-17012/59/2013-IR (M)]

DILIP KUMAR, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: **Sri IRFAN QAMAR**

Presiding Officer

Dated the 27th day of May, 2024

INDUSTRIAL DISPUTE No. 82/2014

Between:

Sri D. Ramesh,

S/o D.V.R. Mohan Rao,

D.No.6/84, Near Court,

Banthumalli (M)

Krishna Distt. – 521 324. … .. Petitioner

AND

The Sr. Divisional Manager,

LIC of India, Divisional Office,

Kennedy Road,

Machilipatnam. … . Respondent

Appearances:

For the Petitioner : Sri ,Y. Ranjeeth Reddy, Advocate

For the Respondent: Sri K.R.L. Sarma, Advocate

A W A R D

The Government of India, Ministry of Labour by its order No. L-17012/59/2013-IR(M) dated 9.5.2024 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of LIC of India and their workman. The reference is,

SCHEDULE

"Whether the removal from service of Sri D. Ramesh, Ex.Temp. Class-IV LIC of India, Machilipatnam Divisional Office w.e.f. 21.1.2013 is legal and justified? If not, what other relief the workman is entitled to?"

The reference is numbered in this Tribunal as I.D. No. 82/2014 and notices were issued to the parties concerned.

2. **The averments made is the claim statement are as follows**:

It is submitted that the Petitioner was appointed as temporary Sub-Staff on 02.02.2006 and performed as a Peon in Class- IV Cadre the Respondent office on payment of Rs. 1500/- per month. It is submitted that the Petitioner was worked continuously without any break, to the entire satisfaction of superior officers. There were no complaints of what so ever nature against the Petitioner in his entire service. It is submitted that the Respondent has not issued any appointment letter and issued wage slips from the year 2011 onwards to the Petitioner during his service and Petitioner used to sign on the vouchers at the time of taking salary and not extended any benefits like provident fund and ESI, etc. service. It is further submitted that from date of joining the Respondent was in practice of paying the wages in dummy names to the Petitioner. The Labour Enforcement Officer, who conducted the inspection basing on the complaint made by the Insurance Employees Union, Machilipatnam, and after inspection of Labour Authorities, the Respondent paid the wages in individual names and also started paying minimum wages to the Petitioner. It is submitted that suddenly Petitioner's services orally terminated on 21.01.2013 without conducting any enquiry, notice pay, compensation which is arbitrary, illegal, unjust and contrary to the provisions of Industrial Disputes Act and against the principles of natural justice and same is nothing but unfair labour practice of the Respondents. It is submitted that the Petitioner gave a representation to the Assistant Labour Commissioner (Central), Vijayawada, at Vijayawada, on 28.01.2013, requesting to intervene the matter and to direct the Respondents to reinstate the Petitioner into service. It is submitted that the Assistant Labour Commissioner (Central), Vijayawada, at Vijayawada issued notice to the Respondents for joint meetings/ conciliation proceedings. Accordingly the Respondents participated in joint meetings and submitted their reply, denying all the contents made in the Petitioners representation. The Assistant Labour Commissioner (Central), Vijayawada, at Vijayawada closed conciliation meetings and sent the failure report to the Government of India. It is submitted that the action of the Respondent by terminating the Petitioner from service w.e.f. 21.01.2013 is illegal and unjustified. The termination is violation of the Sec 25 F, G and H of the Industrial Dispute Act. The Respondent was not given any notice and also not given any retrenchment compensation and Petitioners last drawn salary was Rs.270/- per day at the time of termination. The Respondent wrote a letter to the District of peons on Employment Officer on 16.01.2013 for engagement temporary basis in place of 53 permanent vacancies. It is submitted that one side they calling from Employment Exchange for engagement of peons on temporary basis and another side they terminated the service of the Petitioner from 21.01.2013 without conducting any enquiry and without any notice or notice pay. It is nothing but unfair labour practice adapted by the Respondent. It is submitted that the Petitioner never asked for regularization. It is submitted that entire family is depending on the Petitioners income and after termination of the Petitioner, they are facing untold problems and hardship and the Petitioner is the only bread earner in the family. In spite of his best efforts the Petitioner could not secure any other alternate employment and the Petitioner is unemployed from the date of termination. It is submitted that the Insurance Employees Union made complaints to the Labour Authorities, CBI and Central Vigilance commission with regard to unfair labour practice adopted by the Respondents and basing on complaints made by the Insurance Employees Union all the concerned departments investigated the matter and submitted their report to concerned officials holding that the Respondents are adopted unfair labour practice up to 2011. By perusing the reports it is clearly established that the Petitioner was victimized by the Respondents. It is therefore prayed to this Hon'ble Tribunal may be pleased to pass an Award by set aside oral termination dated 21.1.2013 and directing the Respondents herein to reinstate the Petitioner into service with continuity of service, with full back wages and with all other attendant benefits.

3. Notice served upon the Respondent and in reply to the notice Respondent, appeared. But he did not file any counter. Therefore, the case was proceeded ex-parte against the Respondent vide order dated 6.11.2017. Petitioner in support of his claim, has filed the chief statement affidavit wherein he reiterated the averments made in the claim statement. Further, Petitioner has also filed documents in evidence which have been exhibited as Ex.W1 toW11. From the perusal of documents filed by the Petitioner in evidence goes to reveal that upon the orders of Hon'ble Supreme Court of India, LIC of India conducted one time special examination for recruitment of Peons from out of temporary Peons who had already worked for more than 5 years as 18.1.2011. The examination was conducted on 26/6/2011. The complainant has represented to LIC of India to consider his candidature for those temporary Peons vacancy as he has already worked for more than 5 years as an 18.1.2011. Further, Petitioner submitted that as regards illegality committed by the LIC of India in engagement of workman as well in the matter of payment of their wages in other dummy names, the matter was investigated by Central Vigilance Commission and a report was submitted that CBI, has already investigated in the matter and reported malafide on the part of the office procedure adopted by their predecessors and there were no clear guidelines on the subject. Further, it has been mentioned there in that Commission has already advised CVO, LIC of India to fix accountability of officers found responsible for lapses in process of recruitment of peons and seek FSA of Commission if the concerned officers come within normal jurisdiction of the Commission. Further, the Petitioner has also filed the copy of his Passbook of account of Andhra Bank, which corroborates the averment of the claim statement. Ex.W11 is the copy of the salary voucher which further corroborates the plea of the Petitioner.

4. Therefore, from the oral and documentary evidence on record, it is established that the Petitioner had worked as temporary sub-staff on the post of Peon in Class-IV cadre in the Respondent office on the payment of Rs.1500/- per month and he was not issued any appointment letter but he was issued with the wage slip only from the year 2011 onwards. Earlier Petitioner used to sign on the voucher at the time of taking salary and no benefits of PF, ESI was extended to him. Further, Petitioner has submitted that from the date of joining Respondent was in practice of payment paying wages in dummy names of the Petitioner. The Labour Enforcement Officer who conducted the inspection basing on the complaint made by the Insurance Employees Union, Machilipatnam against Respondent LIC of India and after inspection of labour authorities, the Respondent used to pay the wages in individual names and also started paying minimum wages to the Petitioner. Further, Petitioner has submitted that the action of the Respondent by terminating the services of the Petitioner with effect from. 21.1.2013 is illegal and unjustified. The termination was in violation of provision of section 25F.

5. The claim of the Petitioner that he was appointed as temporary staff class-IV on 2.2.2006 in Respondent office is corroborated and established by the oral and documentary evidence produced by him in support of his claim. Petitioner's plea in claim statement as well as oral and documentary evidence produced by him on record remained unrebutted and uncontraverted in the absence of counter of the Respondent. Therefore, on the basis of unrebutted evidence of the Petitioner, on record, I am of the view that the claim of the Petitioner that he has been terminated from service in violation of the provision of section 25 F is liable to be accepted. Therefore it is held that Petitioner has been terminated in contravention of the provision of Section 25F of the I.D. Act, 1947.

6. As far as the plea of Petitioner for reinstatement in the employment of the Respondent is concerned, in this context, Hon'ble Apex Court have held that, when the termination of the Workman has been found by Labour Court, in contravention of the provision of Section 25 F of the ID Act, workman not necessarily be liable to be reinstated into the employment. In alternative the compensation to the Workman for such termination would be appropriate relief. Therefore, the claim of the Petitioner for his reinstatement in the employment of Respondent is not acceptable.

Hon'ble Supreme Court of India i**n the case of BSNL Vs. Bhurumal, Civil Appeal No.10957/2015 AIR 2014 SCC 1188, Hon'ble Court have held:-**

"It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee." Jagbir Singh has been applied very recently in Telegraph Deptt. V. Santosh Kumar Seal[12], wherein this Court stated: (SCC p.777, para ll) "In view of the aforesaid legal position and the fact that the workmen were engaged as daily wagers about 25 years back and they worked hardly for 2 or 3 years, relief of reinstatement and back wages to them cannot be said to be justified and instead monetary compensation would subserve the ends of justice."

23. It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and or malafide and/or by way of victimization, unfair labour practice etc. However, when it comes to the case of termination of a daily wage worker and where the termination is found illegal because of procedural defect, namely in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view in such cases reinstatement with back wages

is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious."

Therefore, in view of the fore gone discussion and law laid down by the Hon'ble Apex Court as discussed above and in the facts and circumstances of the case in view the total period of the employment of the Workman under the Respondent Organization, the compensation of Rs.1,50,000/- would be appropriate relief to the workman in lieu of reinstatement. Therefore, the claim statement of the Petitioner deserves to be allowed accordingly.

AWARD

In view of the fore gone discussion and law laid down by the Hon'ble Apex Court, as discussed above, I am of the considered view that the action of the Respondent in terminating the services of the Petitioner Sri D. Ramesh is held illegal and unjustified as being in violation of Sec.25F of the I.D. Act, 1947. Since he has been terminated from the service in the year 2013, therefore, the Petitioner is entitled to a compensation of Rs.1,50,000(Rupees One Lakh Fifty Thousand only)from Respondent against his illegal termination in lieu of reinstatement. Thereby the Respondent is directed to pay the compensation amount of Rs.1,50,000/- to the Petitioner Sri D. Ramesh within three months after receiving copy of this award, with all attendant benefits due to the Petitioner, failing which he has to pay the interest of 12% p.a. Reference is answered accordingly.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her, corrected and signed by me on this the 27th day of May, 2024.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri D. Ramesh	MW1: NIL

Documents marked for the Petitioner

Ex.W1: Photostat copy of reference order dt.9.5.2014

Ex.W2: Photostat copy of lr. from Respondent to District Employment Officer dt.1.1.2013

Ex.W3: Photostat copy of inspection report by the ALC(C), Vijayawada dt.2.2.2012

Ex.W4: Photostat copy of CBI report dt.3.5.2012

Ex.W5: Photostat copy of enquiry report submitted by the DCLC(C), Bangalore dt. 14.6.2012

Ex.W6: Photostat copy of inspection report by the central Vigilance Commission dt. 26.2.2013

Ex.W7: Photostat copy of wage slip for m/o November, 2012

Ex.W8: Photostat copy of list of temporary workers

Ex.W9: Photostat copy of Andhra Bank Pass Book of Petitioner from 8.10.2011 to 9.7.2013

Ex.W10:Photostat copy of statement showing the wages paid to Petitioner in dummy names

Ex.W11:Photostat copy of statement showing the payment voucher number from July 2011 to January, 2013

Documents marked for the Respondent

NIL

नई दिल्ली, 19 जुलाई, 2024

का.आ. 1444.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **मेसर्स जी. आई. सिक्योरिटी ऑफ़ (आई) प्राइवेट लिमिटेड; मेसर्स एन.वी. एस. कंस्ट्रक्शंस; मेसर्स एफएल स्मिड्थ मिनरल्स प्राइवेट लिमिटेड; मेसर्स राष्ट्रीय इस्पात निगम लिमिटेड** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री बेवरा एसवारा राव** के बीच अनुबंध में निर्दिष्ट **केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद, पंचाट (एम.पी. न. 1/2016)** को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 18.07.2024 को प्राप्त हुआ था।

[सं. जेड - 16025/03/2024-आईआर (एम)-3]

दिलीप कुमार, अवर सचिव

New Delhi, the 19th July, 2024

S.O. 1444.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(M. P. No. 1/2016)** of the **Central Government Industrial Tribunal cum Labour Court, Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **M/s G.I. Security Office (I) Private Limited; M/s N.V.S. Constructions; M/s FL Smith Minerals Private Limited; M/s Rashtriya Ispat Nigam Limited** and **Shri Bevara Eswara Rao** which was received along with soft copy of the award by the Central Government on 18.07.2024..

[No. Z-16025/03/2024-IR (M)-3]

DILIP KUMAR, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, HYDERABAD

Present: - Shri **Irfan Qamar**,

Presiding Officer

Dated the 16th day of May, 2024

M.P. No. 1/2016

Between:

Sri Bevara Eswara Rao,

S/o Late Ramulu,

R/o H.No.21-30-7, Musala Naidu Palem

Village, Pedagantyada Mandal,

Visakhapatnam – 530 044. … ..Petitioner

And

1. Managing Director,
   M/s.G.I. security of (I) Pvt. Ltd.,
   Sukshithi Apartments, Flat No.8/B,
   No.19, Bulligunj circular Road,
   Kolkatta -19.
2. Managing Director,
   M/s. N.V.S. Constructions,
   D.No.65-6-762/8,
   1st floor, Gohsiya Mazid,
   New Gajuwaka, Visakhapatnam-26.
3. Managing Director,
   M/s. FL Smidth Minerals Pvt. Ltd.,
   Near Centring Plant Area, Repair Shop,
   Visakhapatnam Steel Plant, Visakhapatnam.
4. Executive Director(Works),
   M/s. Rashtriya Ispat Nigam Ltd,
   Visakhapatnam Steel Plant,
   Visakhapatnam – 530 031. ….. Respondents

Appearance:

For the Petitioner : Sri Y. Ranjeeth Reddy, Advocate

For the Respondent : Sri Dogga Chiranjeevi, Advocate

ORDER

This petition has been filed by Sri Bevara Eswara Rao, Ex. Security Guard, under Sec.33 C(2) of the Industrial Disputes Act, 1947 with the averment that the Respondent be directed to pay a sum of Rs.2,35,160/- towards the unpaid overtime wages, weekly offs, national and festival holidays, gratuity and retrenchment compensation from 2001 to 31.3.2016.

2. That the Petitioner submits that Petitioner was appointed as security Guard in the 1st Respondent organization on 17.3.2001. 1st Respondent organization is a man power supplying contractor and having contracts with several private companies for supply of man power and as per instructions of 1st Respondent organization, the Petitioner has worked as Security Guard at 3rd Respondent organization from 8.12.2010 to 11.9.2011. During this period Respondent No.1 and 3 extracted work from Petitioner 12 hours per day and for that the 1st Respondent raised bill and received for 12 hours per day from 3rd Respondent. But the 1st Respondent paid 8 hours per day pay to the Petitioner and not paid the overtime wages. Accordingly, the 1st Respondent has not paid weekly offs wages and public holidays wages during this period of work i.e., form 8.12.2010 to 11.9.2011 to the Petitioner. Further, Petitioner submits that 3rd Respondent cancelled the contract of 1st Respondent w.e.f. 12.9.2011. The 3rd Respondent gave a new contract to the 2nd Respondent without settling accounts of workers from 1st Respondent. The Petitioner's services along with co-workers were utilized by the 3rd Respondent through 2nd Respondent from 12.9.2011 to 30.3.2016 and while so, the 3rd Respondent removed the services of Petitioner along with other workers, without any notice or notice pay and without payment of compensation is unjust, arbitrary and against the principles of natural justice and also against the provisions of I.D. Act, 1947. It is submitted that at the time of term the Petitioner was getting Rs.334/- per day as wages. Further, Petitioner submits that after illegal termination, he made a representation to the RLC(C), Visakhapatnam to intervene the matter for payment of monetary benefits. In turn, the RLC(C) issued notice to the Respondent to attend joint meeting on 9.6.2016, but only 2nd Respondent attended and without any calculation paid some amounts o the Petitioner and the rest of the Respondent did not attend the joint meeting. Further, Petitioner submits that he is entitled to receive the overtime wages, festival holiday wages, weekly off wages for the period from 8.12.2010 to 11.9.2011 and also entitled to receive the compensation and gratuity for 15 years of the service form 17.3.2001 to 30.3.2016 as mentioned in the charge given in the petition. Thereby Petitioner's claim for,

Overtime wages	Rs.	64,218/-
Weekly off wages:40 x Rs.231/-per day	Rs.	9,240/-
For national & festival holidays wages:		
6 x Rs.231/- per day	Rs.	1,386/-
Compensation:		
15 days per year x Rs.334/- per day x 16 years	Rs.	80,160/-
Gratuity:		
15 days per year x Rs.334/- per day x 16 years	Rs.	80,160/-
Grand Total :	Rs.	2,35,164/-

3. Notice served upon the Respondents. Despite service of the notice through registered post acknowledgement due, Respondent No.1 did not turn up nor did not file any objection against the petition. Therefore, the case is set ex-parte against Respondent No.1. Only Respondent No.2 has filed counter, rest of the Respondents has not filed any counter. Therefore, matter proceeded against the rest of the Respondents.

4. Respondent No.2 in his counter has contended that the allegation made in the petition are not considered correct and are hereby denied. Further, It is contended that Petitioner is put to strict proof of all such allegations that are not expressly traversed herein. Respondent contended that the petition is misconceived and filed only with an intention to harass the Respondent No.2 thereby make wrongful gain and cause wrongful loss to the Respondent No.2. It is submitted that the Petitioner made a representation to the Regional Labour Commissioner (Central), Visakhapatnam to intervene the matter for payment of monitory benefits. In turn the Regional Labour Commissioner (Central), Visakhapatnam issued notice to the respondents, to attend joint meeting on 9.6.2016 is true and correct. The Respondent No.2 submits that he attend the meeting before the Regional Labour Commissioner (central), Visakhapatnam and settled the matter before the Regional Labour Commissioner (Central), Visakhapatnam by giving an amount of Rs.31,000/- (Rupees Thirty One Thousand Only) to the Petitioner. The Respondent also submits that the Petitioner himself admitted in the petition that the Respondent No.2 paid amount to the Petitioner before the Regional Labour Commissioner (Central), Visakhapatnam. It is submitted that the allegation that Respondent No.2

paid the amount to Petitioner without any calculation are not true and correct. The Respondent No.2 submits that the he had cleared all the amount which is entitled by the Petitioner before the Regional Labour Commissioner (Central), Visakhapatnam and the Petitioner received the amount given by the Respondent No.2 and he satisfied with the amount for which he is entitled and kept silent for some days and again he made this petition by stating that the Respondent No.2 paid the amount to him without calculation. Further, it is submitted that the Petitioner has not mentioned the amount of Rs.31,000/-(Rupees Thirty One Thousand Only) which he has received from the Respondent No.2 at the time of settlement before the Regional Labour Commissioner (Central), Visakhapatnam. It is submitted that the Respondent never delayed any monthly salary to the Petitioner at any stage and the Respondent paid all the salary and other benefits on every month without any delay. The Respondent No.2 submits that a full settlement was taken place before the Regional Labour Commissioner (Central) Visakhapatnam between the Respondent No.2 and the Petitioner. Further, it is submitted that he need not pay any more amount to the Petitioner. The Respondent No.2 submits that he filed a copy of settlement along with this counter. Therefore, prayed to dismiss the petition with costs.

5. Petitioner in support of his claim has filed photocopies of eight documents Ex.W1 to W8 including ESI Card, where he was making subscription regularly and also filed his identity card. Ex.W1 is representation to RLC(C), Ex.W2 is the notice issued by the RLC(C) to the Respondents, Ex.W3 is the identity card issued by the Respondent No.3, Ex.W4 is the ESI card, Ex.W5 is the PF slip, Ex.W6 is the Memorandum of Settlement, Ex.W7 is the Pay slip and Ex.W8 is the E.P.F.S. statement for the year 1.4.2010 to 31.3.2011. Respondent did not examine any witness in support of his contention. But, Respondent has filed photocopy of Memorandum of Settlement dated 9.6.2016 between the parties before the RLC(C) and also filed the receipts of full and final benefits paid to the Petitioner, i.e., 1) for Erection conveyor equipments work, for April, 2009, full & Final benefits, 2) statutory bonus for April, 2009, 3) for Erection conveyor equipments work, for September, 2011- full & final bonus and 4) for Erection conveyor equipments work, for September, 2011 full & final bonus.

6. Perused the record. Admittedly, the settlement has been executed on dated 9.6.2016 between the Petitioner and the Respondent and in terms of settlements, an amount of Rs.31000/- has been paid to the Petitioner, Sri B. Eswara Rao as full and final settlement of all his dues i.e.,, unpaid wages, overtime allowance for 7 months and the workman Sri B. Eswara Rao also agreed to the same. Further, it was also agreed that the Management to settle the EPF account on receipt of application from the workman and to issue one service certificate for the services rendered. Further, it was also agreed that Petitioner workman shall not raise any kind of further dispute either before the Industrial forum or before the Court of Law. Further, this settlement has been signed by both the parties as well as by RLC(C), Visakhapatnam.

Sec.18 of the I.D. Act, 1947 contain the provision of binding nature of settlements and awards:-.

"*(1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. "*

Therefore, in view of the provision contained u/s. Sec.18 of I.D. Act, 1947, the settlement dated 9.6.2016 arrived at between the parties is binding upon both the parties i.e., Petitioner's as well as Respondent. As the settlement dated 9.2.2011 has arrived at between the Petitioner and the Respondent No.2, and full and final settlement of all dues has been paid to the Petitioner, under the settlement. Therefore, Petitioner can not be permitted to raise dispute, regarding overtime wages, compensation in terms of his service. Respondent has also filed copy of receipts payment of full and final benefits to Petitioner's document No.1, is a receipt of full and final benefits for Erection conveyor equipments work, for April, 2009, wherein at Sl.No.4, Petitioner's name is mentioned and against his name a payment of Rs.29,207/- is entered. Document No.2, is receipt payment of statutory bonus for April, 2009, and at Sl.No.4, paid amount is entered Rs.6734/-. Further, receipt No.3 shows name of Petitioner at Sl.No.7 and against his name payment of Rs.39,660/- is entered for Erection conveyor equipments work, for September, 2011- full & final bonus. Receipt No.4 shows his name at Sl.No.5 against an amount of Rs.10,515/- for Erection conveyor equipments work, for September, 2011 full and final payment of bonus.

The provision of Sec.33C(2) provides that,

" (2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government; within a period not exceeding three months Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit."

Thus, on the plain reading of wording of Sec.33C(2), it is seen that, any workman is entitled to receive from the employer any money or any benefit if any question arises as to the amount of money due, then the question may be decided by such Labour Court, meaning thereby if right to get the money on the basis of settlement or award is not established no money/amount of money will be due. If it is established that it is to be found out it may be by mere

calculation as to what is the amount due. The following decision of Hon'ble Supreme Court of India is relevant in this regard:-

In the case of Union of India and another Vs.Kankuben and others, 2006 LLR 494 SC, Hon'ble Supreme Court of India have held:-

"Whenever a workman is entitled to receive from his employer any money or benefit which is capable of being computed in terms of money and which he is entitled to receive from his employer and is denied of such benefit can approach Labour Court under section 33-C (2) of the Act. The benefit sought to be enforced under section 33-C (2) of the Act is necessarily a pre-existing benefit or one flowing from a pre-existing right. The difference between a pre-existing right or benefit on one hand and the right or benefit, which is considered just and fair on the other hand is vital. The former falls within jurisdiction of Labour Court exercising powers under section 33-C (2) of the Act while the latter does not."

The perusal of the Ex.W1 would reveal that Petitioner had moved an application dated 31.3.2016 addressed to the RLC(C), Visakhapatnam with the prayer to direct the Respondent regarding his payment from Respondent towards overtime allowance, weekly off wages, national and festival holidays wages, compensation and gratuity for the period from 8.12.2010 to 11.9.2011. RLC(C) issued notice to the contractor M/s. G.I. Security of (I) Pvt, Ltd., Kolkata, as well as M/s. N.V.S. Constructions, Visakhapatnam. Respondent No.2 M/s. N.V.S. Constructions appeared before the RLC(C) for conciliation proceeding and vide document Ex.W6 settlement arrived at before the RLC(C), Visakhapatnam in the industrial dispute between the Management of M/s. FL Smidth Minerals Pvt. Ltd., and M/s. N.V.S. Constructions (Contractor of M/s. RINL, Visakhapatnam Steel Plant) and Sri B. Eswara Rao,, Ex. Security Guard, over alleged illegal termination of his services and due amounts. Further, Ex.W6 further delineates that the terms of settlement were reduced into writing on dated 9.6.2016 as agreed by the parties. The terms of settlement arrived at between parties on 9.6.2016 reads as follows:-

"1) It is agreed by the Management that an amount of Rs..31,000/-(Rupees Thirty one thousand only) shall be paid to Shri B. Eswara Rao, the workman as full and final settlement of all his dues i.e., unpaid wages and OT Allowance for 07 months if any, in shape of Demand draft or cheque in the name of the workman within 3 (three) days from the date of signing the Settlement. The workman agreed for the same.

2) It is also agreed by the Management to settle the EPF Account on receipt of application from the workman and also to issue one service Certificate for the services rendered.

3) It is also agreed by Shri B. Eswara Rao, the workman that he shall not raise any kind of further dispute either before the Industrial forum or before the Court of Law."

At the foot of settlement all the parties to settlement as well as RLC(C) has affixed their signatures. Thus, the claim of the Petitioner as mentioned in his petition u/s 33C(2) of I.D. Act, 1947 i.e., overtime allowance , weekly off wages, national and festival holidays wages, compensation and gratuity has already been settled through settlement Ex.W6. Therefore, as per provision of Sec.18 of the I.D. Act, 1947, the settlement Ex.W6 arrived at by agreement between the Petitioner workman and Respondent is binding on both parties. However, the Petitioner in his petition has no where alleged that the terms of settlement as mentioned in Ex.W6 has not been complied with by the Respondent No.2 nor challenged validity of the settlement. Further, Respondent in support of his contention has filed documents, the photocopy of Memorandum of Settlement, dated 9.6.2016 between the parties before the RLC(C) and also filed the receipts of full and final benefits paid to the Petitioner, i.e., 1) for Erection conveyor equipments work, for April, 2009, full & Final benefits, 2) statutory bonus for April, 2009, 3) for Erection conveyor equipments work, for September, 2011- full & final bonus and 4) for Erection conveyor equipments work, for September, 2011 full & final bonus, these receipts further goes to show that the terms of settlement vide Ex.W6 dated 9.6.2016, one time settlement payment has been made.

In the case of **National Engineers Industries v. St. of Rajasthan Civil Appeal No. 16832/1996 dated 01.12.1999, three judges bench of Hon'ble Apex Court have held**:-

"In Ram Pukar Singh and Ors. Vs. Heavy Engineering Corporation and Qrs. [1994] 6 SCC 145 this Court said that a settlement arrived at between the management and the sole recognised union of workmen under section 12(3) read with section 18 of the Act would be binding on all the workmen whether members of the union or not."

Therefore, in view of the above decision of Hon'ble Apex Court, that settlement remains binding upon both parties.

7. The claim of the Petitioner regarding over time wages from 8.12.2010 to 11.9.2011 amounting to Rs.64,218/-, the weekly off wages for the period from 8.12.2010 to 11.9.2011 amounting to Rs.9,240/- and regarding national and festival holidays wages amounting to Rs.1,386/-, regarding all these categories of claims has been satisfied through the settlement dated 9.6.2016 between the Petitioner and Respondent No.2 before the RLC(C). As far as the claim for compensation for illegal termination is concerned, that can not be permitted under the provision of Sec.33C(2) of the I.D. Act, 1947. Since Petitioner has not filed any copy of the award or order of the competent court to declare him for entitlement to claim compensation for his illegal termination from the employment. Therefore, the claim of compensation for illegal termination is not existing right /claim on the date of filing the

petition under Sec.33C(2). Hence, it is not maintainable under aforesaid provision. Further, regarding claim of gratuity Petitioner has claimed the gratuity for 16 years but as per the claim of the Petitioner that the Respondent No.3 organization has cancelled the contract of Respondent No.1 w.e.f. 12.9.2011 and gave the contract to the Respondent No.2, meaning thereby that the Respondent No.1 is liable to pay the gratuity amount up to the period of 12.9.2011. Therefore, in view of the fore gone discussion, the Petitioner's petition for the claim of the dues is liable to be allowed partly.

ORDER

Therefore, in view of the discussion as above, the Petitioner's application u/s 33C(2) of I.D. Act, 1947 for claiming the overtime dues, weekly off wages and national/festival holidays wages and compensation, is dismissed. The claim of the Petitioner for gratuity for the period upto 12.9.2011 from the date of his appointment with Respondent No.1 is allowed. The Respondent No.1 is directed to pay the dues of gratuity as claimed in the petition, to the Petitioner Sri Bevara Eswara Rao, within two months from the receipt of this order, failing which he has to pay the dues with interest @ 18% @12%.

Ordered accordingly.

Dictated to Smt P. Phani Gowri, Personal Assistant, transcribed by her, corrected and signed by me on this 16th day of May, 2024.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri B. Eswara Rao	NIL

Documents marked for the Petitioner

Ex.W1:	Photostat copy of representation by the applicant to RLC(C), Visakhapatnam dt.31.3.2016
Ex.W2:	Photostat copy of notice issued by RLC(C), Visakhapatnam to the Respondents dt.19.5.2016
Ex.W3:	Photostat copy of identity card issued by Respondent No.3
Ex.W4:	Photostat copy of ESI identity card
Ex.W5:	Photostat copy of PF slip
Ex.W6:	Photostat copy of Memorandum of Settlement dt.9.6.2016
Ex.W7:	Photostat copy of pay slip.
Ex.W8:	Photostat copy of E.P.F.S. statement for the year 1.4.2010 to 31.3.2011.

Documents marked for the Respondent

NIL

नई दिल्ली, 23 जुलाई, 2024

का.आ. 1445.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **ऐरिया मेनेजर, सेन्ट्रल एक्साइज इन्टेलीजेन्स विभाग, नई दिल्ली;द असिस्टेंट डायरेक्टर, सेन्ट्रल एक्साइज इन्टेलीजेंस विभाग, जयपुर,** के प्रबंधतंत्र के संबद्ध नियोजकों और श्री **दिलीप सिंह जादौन, कामगार,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-जयपुर,पंचाट (संदर्भ संख्या 82/2005) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 23.07.2024 को प्राप्त हुआ था।

[सं. एल - 42012/174/2004-आईआर (सी-II)]

दिलीप कुमार, अवर सचिव

New Delhi, the 23rd July, 2024

S.O. 1445.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 82/2005) of the **Central Government Industrial Tribunal cum**

Labour Court – Jaipur as shown in the Annexure, in the Industrial dispute between the employers in relation to **Area Manager, Central Excise Intelligence, New Delhi; Assistant Director, Central Excise Intelligence, Jaipur, and Shri Dilip Singh, Jadoun, Worker,** which was received along with soft copy of the award by the Central Government on 23.07.2024.

[No. L-42012/174/2004-IR (C-II)]

DILIP KUMAR, Under Secy.

अनुलग्नक

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर

पीठासीन अधिकारी

राधा मोहन चतुर्वेदी

सी.जी.आई.टी. प्रकरण सं.– 82/2005

Reference No. L-42012/174/2004-IR (CM-II) Dated: 29.06.2005

श्री दिलीप सिंह जादौन पुत्र श्री भंवर सिंह, निवासी– 112/197, राम तीर्थ मार्ग, मानसरोवर, अग्रवाल फार्म, जयपुर (राज.)।

.....प्रार्थी

बनाम

1. ऐरिया मेनेजर, सेन्ट्रल एक्साइज इन्टेलीजेन्स विभाग, वेस्ट ब्लॉक– VIII] विंग नं. VI, द्वितीय तल, आर.के. पुरम, नई दिल्ली–110066

2. द असिस्टेंट डायरेक्टर, सेन्ट्रल एक्साइज इन्टेलीजेंस विभाग, केशव पथ बी.–40, सूरज नगर (वेस्ट), सिविल लाइन्स, जयपुर।

.....अप्रार्थीगण/विपक्षी

उपस्थितः–

: श्री सुरेन्द्र सिंह नालोट, अभिभाषक – प्रार्थी।

: श्री किंशुक जैन, अभिभाषक –विपक्षीगण।

: अधिनिर्णय :

दिनांक :18.06.2024

1. श्रम मंत्रालय भारत सरकार नई दिल्ली, द्वारा दिनांक 29.06.2005 को औद्योगिक विवाद अधिनियम 1947 (जिसे आगे मात्र अधिनियम कहा जावेगा) की धारा 10 (1) (डी) व 2A के अन्तर्गत प्रदत्त शक्तियो के अनुसरण में निम्नांकित औद्योगिक विवाद न्यायनिर्णयन हेतु इस अधिकरण को संदर्भित किया गया :–

> **"Whether the action of the management of Central Excise Intelligence Department, Jaipur in terminating the services of Shri Dilip Singh Jadon w.e.f. 28.02.2004 is legal and justified? If not, to what relief the claimant is entitled to and from which date?"**

2. प्रार्थी द्वारा दिनांक 07.09.2005 को अंग्रेजी भाषा में प्रस्तुत दावे के अभिकथन के अनुदित संक्षिप्त तथ्य इस प्रकार हैः–

3. प्रार्थी ने अप्रार्थी संख्या–2 के कार्यालय में चतुर्थ श्रेणी कर्मचारी के रूप में दिनांक 15.09.2000 से कार्य किया। प्रारम्भ में 3 माह के लिये कार्य पर लगाया गया जिसे बाद में फरवरी, 2004 तक बढाया गया। प्रार्थी को 60/–रू. प्रतिदिन वेतन भुगतान किया गया। अप्रार्थी संख्या– 2 के कार्यालय में सहायक निदेशक, अधीक्षक एवं अन्वेषण अधिकारी तथा प्रार्थी को मिलाकर 6–7 कर्मचारी थे। प्रार्थी को यह आश्वासन वरिष्ठ अधिकारियों द्वारा समय–समय पर दिये जाते रहे कि प्रार्थी को विपक्षी विभाग में नियमित पद पर स्थाई कर दिया जायेगा। दिनांक 27.02.2004 को प्रार्थी ने चूँकिं बढ़ी हुई दर से वेतन

भुगतान की मॉग की थी, विपक्षीगण ने उसे सेवामुक्त करते हुये यह कहा कि दिनांक 28.02.2004 से वह काम पर न आये। प्रार्थी की सेवायें अधिनियम की धारा 25 F, G व H के प्रावधानों के उल्लंघन में समाप्त की गई हैं। प्रार्थी को 01 दिसम्बर, 2003 से 27.02.2004 तक नियमित रूप से काम करने पर भी वेतन भुगतान नहीं किया गया, जिसे प्राप्त करने का प्रार्थी अधिकारी है। विपक्षी ने प्रार्थी को सेवामुक्त करने के पश्चात श्री किशन को चतुर्थ श्रेणी कर्मचारी के पद पर रख लिया है। प्रार्थी ने विपक्षीगण के अधीन प्रत्येक 12 महीने की अवधि में 240 दिन से अधिक कार्य किया है, और लगातार 3 वर्ष 6 माह तक सेवा में रहा। अतः प्रार्थी को विगत वेतन परिलाभों एवं सेवा में निरतंरता सहित पुनः नियोजित किया जावे।

4. दिनांक 24.10.2005 को विपक्षीगण की ओर से अंग्रेजी भाषा में प्रस्तुत वादोत्तर के अनुदित संक्षिप्त तथ्य इस प्रकार हैः–

5. विपक्षीगण के अधीन चतुर्थ श्रेणी कर्मचारी/फर्राश कोई स्वीकृत पद नहीं है। साफ सफाई आदि के विभिन्न कार्यो को करवाने के लिये आकस्मिक श्रमिक को रखा जाता है। जिसकी प्रशासनिक स्वीकृति समय–समय पर ली जाती है। प्रार्थी को विपक्षी के कार्यालय में दिनांक 31.10.2003 के बाद कभी भी काम पर नहीं रखा गया। प्रार्थी ने कभी भी 240 दिन कार्य 12 कलेण्डर मास में नहीं किया। प्रार्थी को कोई लाभ अधिनियम की धारा 25 F के अंतर्गत नहीं दिया जा सकता। प्रार्थी ने जितने दिन कार्य किया उतने दिन का वेतन भुगतान कर दिया गया है। विपक्षी के मुख्यालय से प्राप्त निर्देशों के अनुपालन में साफ सफाई का कार्य अक्टूबर, 2003 के बाद मात्र किसी ऐजेन्सी, डीलर या ठेकेदार के माध्यम से ही करवाया जाना था। इसलिए अक्टूबर, 2003 के बाद किसी भी श्रमिक को फरवरी, 2004 तक नहीं लगाया। प्रार्थी की सेवा विपक्षीगण ने समाप्त नहीं की क्योकि उसकी नियुक्ति ही नहीं की गई थी। विपक्षी संख्या– 2 का कार्यालय अधिनियम की धारा 2 (j) में दी गई परिभाषा के अनुसार उद्योग नहीं है। इसलिए प्रार्थी भी अधिनियम की धारा 2 (s) के अनुसार कर्मकार नहीं है। प्रार्थी कोई अनुतोष पाने का अधिकारी नहीं है। अतः दावा निरस्त किया जावे।

6. दिनांक 06.12.2005 को मेरे पूर्वाधिकारी द्वारा इस विवाद में निम्नाकिंत विचारणीय बिन्दु निर्धारित किये गयेः

7. <u>विचारणीय बिन्दु सं.–</u>

I. Whether the workman was engaged as a class IV full-time employee on 15.09.2000 in the office of non-applicant no. 2, who continuously worked till February, 2004, but whose service was terminated w.e.f. 28.02.2004 in violation of Section 25-F of the Act? BOA

II. Whether subsequent to the termination of workman's service the fresh hands have been recruited by the management in violation w.e.f. of Section 25-H of the Act? BOA

III. Relief, if any.

तत्पश्चात दिनांक 25.06.2012 को निम्नानुसार अतिरिक्त विचारणीय बिन्दु विरचित किया गयाः

III-A. Whether non-applicant does not fall under definition of "Industry" as defined u/s 2 (j) of the ID Act?

8. प्रार्थी ने अपने साक्ष्य में स्वयं दिलीप सिंह जादौन का परीक्षित किया एवं प्रलेखीय साक्ष्य में प्रदर्श W-1 से प्रदर्श W-35 तक प्रलेखों को प्रदर्शित किया।

9. विपक्षी ने अपनी साक्ष्य में रमेश आर. गुप्ता, वरिष्ठ आसूचना अधिकारी को परीक्षित किया और एक अन्य साक्षी श्री मोहित तिवारी, उप निदेशक का शपथ पत्र दिनांक 30.09.2014 को प्रस्तुत किया गया था किंतु इस साक्षी को प्रतिपरीक्षा हेतु विपक्षी ने प्रस्तुत नहीं किया। इसलिए इस साक्षी का शपथ पत्र विपक्षी के साक्ष्य में पठनीय नहीं है।

10. दिनांक 06.05.2024 एवं 07.05.2024 को मैंने उभयपक्ष के अभिभाषकों के तर्क सुने। प्रस्तुत किये गये निम्नांकित न्यायिक दृष्टांतों में पारित विधि पर प्रस्तुत साक्ष्य के संदर्भ में मनन किया।

11. प्रार्थी की ओर से उनके तर्कों के समर्थन में निम्नांकित न्यायिक दृष्टांत प्रस्तुत किये गये।

1. देवेन्दर सिंह बनाम म्युनिसीपल कॉउसिल सानोर (2011) 6 SCC 584 (सुप्रीम कोर्ट)

2. द जनरल मेनेजर एस.बी.आई. चेन्नई बनाम पी.ओ. सी.जी.आई.टी. चेन्नई व अन्य 2015 SCC Online MAD. 2976 (सुप्रीम कोर्ट)

3. डिवीजनल मेनेजर न्यू इंडिया इंश्योरेंस कम्पनी बनाम ए. शंकर लिंगम सिविल अपील संख्या 4445/2006 (सुप्रीम कोर्ट) निर्णय तिथि 03.10.2008

12. विपक्षीगण की ओर से उनके समर्थन में निम्नांकित न्यायिक दृष्टांत प्रस्तुत किये गये।

1. सेक्रेटरी, स्टेट ऑफ कर्नाटक बनाम उमा देवी व अन्य (2006) 4 सुप्रीम कोर्ट कैसेज–1

2. कृष्णा भाग्य जल निगम लि. बनाम मोहम्मद रफी (2009) 11 सुप्रीम कोर्ट कैसेज–522

3. हिमांशु कुमार विद्यार्थी व अन्य बनाम स्टेट ऑफ बिहार व अन्य (1997) 4 सुप्रीम कोर्ट कैसेज–391

4. सुप्रीटेंडेंट सवाई मानसिंह होस्पीटल जयपुर व अन्य बनाम गिर्राज प्रसाद शर्मा व अन्य S.B. Civil Writ Petition No. 11343/2014 (राज. उच्च न्यायालय) निर्णय तिथि 25.05.2022.

13. विचारणीय बिन्दुओं पर क्रमिक निर्णय इस प्रकार हैः–

14- <u>विचारणीय बिन्दु संख्याः–</u> I.

15. इस बिन्दु के अंतर्गत प्रार्थी को कर्मकार मानते हुये उसके द्वारा अप्रार्थी संख्या– 2 के कार्यालय में फरवरी, 2004 तक कार्यरत रहने का बिन्दु विवेचनीय है। यहॉ यह उल्लेख किया जाना असंगत नहीं है कि प्रार्थी का "कर्मकार" होना विपक्षी संस्थान के "उद्योग" होने की प्रास्थिति पर निर्भर है। प्रार्थी तभी "कर्मकार" की परिभाषा के अंतर्गत आ सकता है जब विपक्षी संस्थान का "उद्योग" होना स्थापित कर दिया जावे। विचारणीय बिन्दु संख्या III-A के अंतर्गत विपक्षी संस्थान का "उद्योग" की परिभाषा के अतर्गत न आने का बिन्दु विवेचनीय है। इस स्थिति में इस बिन्दु पर विनिश्चय विचारणीय बिन्दु संख्या III-A के विवेचित निष्कर्ष पर निर्भर करेगा।

16. प्रार्थी ने अपनी साक्ष्य में यह कहा है कि उसे दिनांक 15.09.2000 को अप्रार्थी संख्या–2 के जयपुर कार्यालय में चतुर्थ श्रेणी कर्मचारी के पद पर 60/–रू. दैनिक वेतन पर नियुक्त किया गया था। उसे प्रथम बार में 89 दिन के लिए रखा गया था। जिसे बाद में 89 दिन–89 दिन, की अवधियों हेतु बढाया गया। प्रार्थी की इस नियुक्ति हेतु अप्रार्थी के दिल्ली स्थित कार्यालय द्वारा समय–समय पर अनुमोदन किया गया और प्रार्थी की सेवा को निरंतर रखा गया। प्रार्थी ने अपने साक्ष्य में इन अनुमोदन आदेशों को प्रदर्श W-1 से प्रदर्श W-10 तक प्रदर्शित किया है, तथा दिनांक 15.09.2000 से अक्टूबर, 2003 तक के वेतन भुगतान संबंधी वाउचर्स को प्रदर्श W-11 से प्रदर्श W-35 तक प्रदर्शित किया है।

17. प्रार्थी का कथन है कि नवम्बर, 2003 से फरवरी, 2004 तक का वेतन 6708/–रू. विपक्षीगण द्वारा भुगतान नहीं किया गया है। किंतु प्रतिपरीक्षा में प्रार्थी का यह कथन है कि नवम्बर, 2003 से फरवरी, 2004 तक कार्य करने के संबंध में उसने कोई अभिलेख प्रस्तुत नहीं किया है। क्योकि विभाग (विपक्षीगण) ने नहीं दिया।

18. प्रार्थी द्वारा नवम्बर, 2003 से फरवरी, 2004 तक की अवधि का अभिलेख विपक्षी से प्रस्तुत करवाने हेतु एक प्रार्थना पत्र प्रस्तुत किया गया था। जिसे अधिकरण द्वारा स्वीकार कर विपक्षीगण को प्रार्थित अभिलेख प्रस्तुत करने का आदेश दिया गया था। किंतु विपक्षीगण की ओर से दिनांक 19.04.2012 को सक्षम अधिकारी श्रीराम मीना, उपनिदेशक का शपथ पत्र प्रस्तुत कर यह कहा गया है कि अक्टूबर, 2003 के उपरांत चूकिं प्रार्थी ने अंशकालिक या पूर्णकालिक आकस्मिक श्रमिक के रूप में कार्य किया ही नहीं है, इसलिए आदेशित अवधि का अभिलेख उपलब्ध नहीं है। अक्टूबर, 2003 तक का अभिलेख प्रस्तुत कर दिया गया है।

19. इस प्रकार विपक्षीगण द्वारा प्रस्तुत इस शपथ पत्र के आधार पर यह प्रमाणित होता है कि अक्टूबर, 2003 के पश्चात प्रार्थी द्वारा विपक्षीगण के अधीन कार्य करने संबंधी कोई अभिलेख उपलब्ध नहीं

है। विपक्षीगण ने प्रदर्श M-29 पत्र दिनांक 03.11.2003 जो विपक्षी के महानिदेशालय, नई दिल्ली द्वारा जारी किया गया है साक्ष्य में प्रदर्शित किया है। इस पत्र द्वारा यह आदेशित किया गया है कि अक्टूबर, 2003 के बाद साफ सफाई के कार्य हेतु अस्थाई श्रमिकों की नियुक्ति मात्र संविदा पर और सक्षम प्राधिकारी के अनुमोदन के उपरांत ही की जावे। प्रार्थी ने अपने सशपथ कथन के अतिरिक्त नवम्बर, 2003 से फरवरी, 2004 तक कार्य करने के संबंध में कोई प्रलेखीय प्रमाण प्रस्तुत नहीं किया है। इस स्थिति में विपक्षीगण द्वारा नवम्बर, 2003 से प्रार्थी को कार्य पर रखा जाना संभव नहीं रहा है एवं उनकी ओर से प्रस्तुत शपथ पत्र में इस अवधि के अभिलेख उपलब्ध न होने का कारण औचित्यपूर्ण और स्वीकार्य प्रमाणित होता है।

20. प्रार्थी द्वारा कथित सेवा समाप्ति तिथि 28.02.2004 से पूर्ववर्ती एक कलेण्डर वर्ष की अवधि में प्रार्थी द्वारा निम्नानुसार कार्य करना प्रमाणित होता है।

कम सं.	कब से	कब तक	कितने दिन
1.	28.02.2004	01.11.2003	0 दिन
2.	अक्टूबर, 2003	—	20 दिन
3.	सितम्बर, 2003	—	22 दिन
4.	अगस्त, 2003	—	20 दिन
5.	जुलाई, 2003	—	23 दिन
6.	जून, 2003	अप्रेल, 2003	0 दिन
7.	मार्च, 2003	—	20 दिन
8.	कुल योग—		105 दिन

21. यदि सेवा समाप्ति तिथि 01.11.2003 तर्क के लिए मान ली जावे तो नवम्बर, 2002 तक (पूर्ववर्ती एक कलेण्डर वर्ष में) 147 कार्य दिवस होते हैं।

22. इस प्रकार प्रार्थी ने किसी भी एक कलेण्डर वर्ष में 240 दिन से अधिक कार्य नहीं किया है। इस गणना के उपरांत प्रार्थी विपक्षी के अधीन सेवा समाप्ति तिथि के पूर्ववर्ती एक कलेण्डर वर्ष की अवधि में 240 दिन से अधिक सेवा पूर्ण करने का तथ्य प्रमाणित नहीं कर सका है।

23. माननीय उच्चतम न्यायालय ने देवेन्दर सिंह बनाम म्युनिसीपल कॉउसिल सानोर के निर्णय में यह अवधारित किया है कि चूकिं कर्मकार ने 240 दिन से अधिक सेवा पूर्ण कर ली है। इसलिए अधिनियम की धारा 25 थ के प्रावधानों का अनुपालन आदेशात्मक हो जाता है।

24. माननीय मद्रास उच्च न्यायालय के निर्णय द जनरल मेनेजर एस.बी.आई. चेन्नई बनाम पी.ओ. सी. जी.आई.टी. चेन्नई व अन्य में माननीय उच्च न्यायालय ने यह कहा है कि अधिनियम की धारा 25 F के आदेशात्मक प्रावधानों का पालन न होने पर सेवा समाप्ति अवैध होगी। इन दोनों निर्णयों में पारित विधि को मैं ससम्मान प्रार्थी के पक्ष में इसलिए सहायक नहीं पाता हूँ कि उसके द्वारा 240 दिन से अधिक एक वर्ष में कार्य करने का तथ्य प्रमाणित नहीं किया गया है। इसी प्रकार डिवीजनल मेनेजर न्यू इंडिया इंश्योरेंस कम्पनी बनाम ए. शंकर लिंगम में माननीय उच्चतम न्यायालय द्वारा पारित विधि भी प्रार्थी के पक्ष में तथ्यात्मक भिन्नता के कारण सहायक नहीं है। इस निर्णय में माननीय उच्चतम न्यायालय ने "कर्मकार" की परिभाषा को विवेचित करते हुये यह कहा है कि पूर्णकालिक या अंशकालिक श्रमिक की शब्दावली से कोई अंतर कर्मकार की प्रास्थिति पर नहीं पडता है।

25. माननीय सर्वोच्च न्यायालय ने अपने निर्णय कृष्णा भाग्य जल निगम लि. बनाम मोहम्मद रफी में यह अवधारित किया है कि प्रार्थी श्रमिक पर ही यह दायित्व है कि वह सेवा समाप्ति के पूर्ववर्ती एक वर्ष में 240 दिन कार्य करने का तथ्य अपने साक्ष्य से प्रमाणित करे। मात्र शपथ पत्र प्रस्तुत करना पर्याप्त नहीं है। साक्ष्य और विधि के इस विवेचन के उपरांत यह बिन्दु प्रार्थी के विरूद्व निर्णीत किया जाता है।

26- विचारणीय बिन्दु संख्याः– II.

27. इस बिन्दु के संबंध में प्रार्थी दिलीप सिंह जादौन ने अपने साक्ष्य में यह कहा है कि अप्रार्थी संस्थान द्वारा श्रमिकों की वरिष्ठता सूची तैयार नहीं की गई। प्रार्थी की सेवामुक्ति के पश्चात प्रार्थी से जूनियर कर्मचारी श्रीकृष्ण को उसकी जगह काम पर रखा है। यहॉ यह उल्लेख किया जाना आवश्यक है कि कनिष्ठता या वरिष्ठता के बिन्दु का निस्तारण तभी संभव है जब दोनों श्रमिकों की नियुक्ति तिथियॉ किसी प्रलेखीय साक्ष्य सहित प्रस्तुत की जावे। प्रार्थी ने स्वयं की नियुक्ति तिथि 15.09.2000 तो वर्णित कर दी, किंतु उक्त पश्चातवर्ती नियुक्त श्रीकृष्ण नामक व्यक्ति की, न तो नियुक्ति तिथि वर्णित की है न कोई नियुक्ति पत्र प्रस्तुत किया है। प्रतिपरीक्षा में प्रार्थी कहता है कि श्री कृष्ण के संबंध में कोई अभिलेखीय साक्ष्य उसने पेश नहीं की है। विपक्षी साक्षी रमेश आर. गुप्ता ने अपने शपथ पत्र में यह कहा है कि श्रमिक के पद पर किसी भी कनिष्ठ श्रमिक को नियुक्ति नहीं दी गई है। इस स्थिति में अधिकरण के सुविचारित अधिमत से प्रार्थी यह प्रमाणित नहीं कर सका है कि उसकी सेवा समाप्ति के उपरांत विपक्षीगण द्वारा प्रार्थी से कनिष्ठ किसी व्यक्ति को नियुक्ति देते हुये अधिनियम की धारा 25 H के प्रावधानों का उल्लंघन किया है। अतः यह बिन्दु प्रार्थी के विरूद्व निर्णीत किया जाता है।

28- विचारणीय बिन्दु संख्याः– III –A

29. इस बिन्दु के अंतर्गत विपक्षी ने एक प्रार्थना पत्र दिनांक 18.04.2006 को प्रस्तुत किया है। विपक्षीगण का यह कथन है कि महानिदेशालय, कर अपवंचन (केन्द्रीय उत्पाद शुल्क) भारत सरकार के वित मंत्रालय के अधीन मुख्यालय दिल्ली पर कार्यरत है। महानिदेशालय का कार्य गुप्त आसूचनाओं का संकलन एवं विवेचन करते हुये केन्द्रीय उत्पाद शुल्क के अपवंचन का निराकरण करना है। कर अपवंचन से संबंधित अपराधों का अन्वेषण तथा केन्द्र एवं राज्य सरकार की ऐजेन्सीयों से समन्वय स्थापित करते हुये कर एवं उत्पाद शुल्क के अपवंचन के अपराध को रोकना है। कार्य की प्रकृति के आधार पर केन्द्रीय उत्पाद शुल्क का आसूचना विभाग किसी औद्योगिक गतिविधि से कोई संबंध नहीं रखता। इसलिए विपक्षी विभाग अधिनियम की धारा 2 (j) के अंतर्गत दी गई परिभाषा के अंतर्गत उद्योग नहीं है।

30. उल्लेखनीय है कि प्रार्थी द्वारा इस प्रार्थना पत्र का प्रतिउत्तर देते हुये विपक्षी विभाग के कार्यकलापों, कार्य की प्रकृति और दायित्वों के संबंध में किये गये कथनों का स्पष्ट खंण्डन नहीं किया गया है। विपक्षी की ओर से इस संबंध में माननीय सर्वोच्च न्यायालय के निर्णय हिमांशु कुमार विद्यार्थी व अन्य बनाम स्टेट ऑफ बिहार व अन्य में पारित विधि का अवलम्ब लिया है। इस निर्णय में माननीय उच्चतम न्यायालय ने यह अवधारित किया है कि जब नियुक्तियॉ संविधिक नियमों के अंतर्गत किसी शासकीय विभाग द्वारा विनियमित की जाती हो तो प्रत्येक शासकीय विभाग को उद्योग नहीं माना जा सकता है।

31. मैंने इस संबंध में अधिनियम की धारा 2 (j) के संदर्भ में माननीय सर्वोच्च न्यायालय द्वारा पारित महत्वपूर्ण एवं चर्चित निर्णय बंगलोर वाटर सप्लाई एण्ड सीवरेज बोर्ड बनाम राजप्पा 1978 AIR (सुप्रीम कोर्ट) 548 (स्वयं अधिकरण द्वारा) में प्रतिपादित विधि पर विचार किया। इस निर्णय में माननीय सर्वोच्च न्यायालय ने उद्योग की परिभाषा और उसके चरित्र पर विषद विवेचन करते हुये यह मार्गदर्शन दिया है कि "जहॉ पर कोई व्यवस्थित गतिविधि नियोजक एवं कर्मचारी के मध्य सहकार द्वारा संगठित हो, जिसका सारभूत तत्व वाणिज्यक हो– जो सेवा एवं माल के उत्पादन एवं/या वितरण हेतु मानवीय आवश्यकता व आकांक्षाओं की सन्तुष्टि के लिये हो, "उद्योग" है"।

32. लाभ, हेतुक या लाभप्रद उद्देश्य की अनुपस्थिति होना असंगत है। कार्य कलाप की प्रकृति से यदि संगठन व्यापार या व्यवसाय है, तो मात्र प्रतिष्ठान की लोपोककारी गतिविधियॉ उसके उद्योग के चरित्र को प्रभावित नहीं करेंगी।

33. इस कसौटी पर विपक्षी संस्थान के चरित्र/प्रास्थिति को परीक्षित करने पर यह स्पष्ट होता है कि यह संस्थान एक ऐसा शासकीय निकाय है जो आसूचनाओं के संकलन, प्रवर्तन एवं तत्संबंधी अपराधों के अन्वेषण हेतु गठित किया गया है। विपक्षी संस्थान केन्द्रीय उत्पाद शुल्क विधि एवं विनियमों के सम्यक अनुपालन का पर्यवेक्षण करता है। यह संस्थान विनिर्माण इकाइयों व व्यवसायों का निरीक्षण, तलाशी एवं अन्वेषण इस उद्देश्य से करता है कि केन्द्रीय उत्पाद शुल्क संबंधित करों का अपवंचन न हो और उनका भुगतान सुनिश्चित हो। यह केन्द्रीय उत्पाद शुल्क विभाग का एक खण्ड है जहॉ कोई वाणिज्यक गतिविधि

संचालित नहीं होती। प्रार्थी ने अपने तर्क में मात्र यह कहा है कि विपक्षीगण का यह आक्षेप मात्र तकनीकी आक्षेप है जो नियोजक द्वारा दावे के निस्तारण में विलम्ब करने के प्रयोजन से किया जाता है। मैं प्रार्थी के इस तर्क से सहमत नहीं हूँ और यह पाता हूँ कि विपक्षी विभाग के गठन का उद्देश्य और कार्य प्रणाली इस ओर इंगित नहीं करते है कि विपक्षी विभाग द्वारा कोई लाभ अर्जित करने हेतु वाणिज्यिक गतिविधि संचालित की जाती हो। विपक्षी विभाग का कार्य केन्द्रीय उत्पाद शुल्क के अपवंचन को रोकना और तत्संबंधी अपराधों का संकलित आसूचनाओं के आधार पर अन्वेषण करना है। इस विभाग की नियुक्तियों हेतु संविधिक प्रकिया है जो सुनिश्चित नियमों से विनियमित होती है। इस विवेचन के उपरांत विपक्षीगण का आक्षेप स्वीकार करते हुये यह विनिश्चित किया जाता है कि विपक्षीगण अधिनियम की धारा 2 (j) के अंतर्गत परिभाषित "उद्योग" की परिभाषा से अच्छादित नहीं है। अतः यह बिन्दु विपक्षीगण के पक्ष में निर्णीत किया जाता है।

34. III- अनुतोषः–

35. विचारणीय बिन्दु संख्या I, व II, प्रार्थी के विरूद्व निर्णीत हुये है, तथा विचारणीय बिन्दु संख्या III-Aए विपक्षीगण के पक्ष में निर्णीत हुआ है इससे यह प्रमाणित होता है कि चूकिं विपक्षीगण "उद्योग" की परिभाषा में नहीं आते है। इसलिए प्रार्थी को किसी भी प्रकार "कर्मकार" की परिभाषा के अंतर्गत आना नहीं माना जा सकता। प्रार्थी द्वारा विपक्षी के अधीन एक कलेण्डर वर्ष की अवधि में 240 दिन कार्य करने का तथ्य भी प्रमाणित नहीं पाया गया है। इसलिए प्रार्थी को किसी प्रकार अधिनियम की धारा 25 F, G व H के प्रावधानों का संरक्षण उपलब्ध नहीं है। प्रार्थी विपक्षीगण से कोई अनुतोष प्राप्त करने का अधिकारी नहीं है।

36. श्रम मंत्रालय भारत सरकार द्वारा संदर्भित विवाद को इसी प्रकार न्याय निर्णीत किया जाता है।

37. अधिनिर्णय की प्रतिलिपि समुचित सरकार को अधिनियम, की धारा 17 (1) के अंतर्गत प्रकाशनार्थ प्रेषित की जावें।

राधा मोहन चतुर्वेदी, पीठासीन अधिकारी

नई दिल्ली, 23 जुलाई, 2024

का.आ. 1446.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.ई सी.एल.के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिश्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण – सह – श्रम न्यायालय**, जबलपुर के पंचाट (एलसी-आर/**82/2013**) को प्रकाि" ात करती है, जो केन्द्रीय सरकार को **10/07/2024** को प्राप्त हुआ था।

[सं. एल-22012/86/2013-आई.आर. (सी.एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 23rd July, 2024

S.O. 1446.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Reference.LC/-R/82/2013*)*** of the **Central Government Industrial Tribunal-cum-Labour Court, Jabalpur** as shown in the Annexure, in the industrial dispute between the Management of **S.E.C.L.** and their workmen, received by the Central Government on **10*/07/2024.***

[No. L-22012/86/2013 – IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/82/2013

Present: P.K.Srivastava

H.J.S..(Retd)

Sh. Shiv Kumar S/o. Late Markandey,

At- Ward No.9, Near Shiv Mandir, PO Jhagrakhand

Tah. Manendragarh, Distt. Korea (CG)

Workman

Versus

The Chief General Manager,

Hasdeo Area (SECL), PO Jhgarakhand

Tah.- Manendragarh, Distt.- Korea (CG)

The Managing Director

South Eastern Coalfields Limited,

Basat Vihar, Seepat Road, Bilaspur (CG)

Management

(J U D G E M E N T)

(Passed on this 25th day of June-2024)

As per letter dated 18/07/2013 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of Industrial Disputes Act, 1947 as per Notification No. L-22012/86/2013/IR(CM-II) dt. 18/07/2013. The dispute under reference relates to:

"Whether the action of the management of South Eastern Coalfields Limited (SECL), through its Chief General Manager, Hasdeo Area and Managing Director, SECL, Bilaspur (CG) in imposing the penalty of dismissal from service vide order daed 31.03.2005 upon the workman Shri Shiv Kumar, Line Mazdoor, is legal, proper an d just ? If not, to what relief the workman is entitled to ? "

After registering a case on the basis of the reference, notices were sent to the parties and were served. Parties appeared and file their respective Statement of Claims and Defense.

According to the workman, he was served a charge sheet on 07.09.2004 and after his representation on charge sheet was found not sufficient by management, a departmental enquiry was ordered against the workman for the charge of habitual unauthorized absence from work within the period 1999 to 2004. His presence on duty was 158 days in 1999, 81 days in 2000, 109 days in 2001, 27 days in 2002 and 0 days in 2003 & 2004. The enquiry was conducted against rules and procedure. The Enquiry Officer submitted his enquiry report wrongly holding him guilty for willful absence from work and thus holding the charge of misconduct proved against the workman. The Disciplinary Authority also wrongly dismissed the workman by passing the punishment order which is disproportionate to the charge. He prayed that setting aside his dismissal, he be reinstated with all back wages and benefits.

Rebutting the allegations of the workman, management has taken a case in their written statement of defense that the workman was a habitual absentee. He was on duty only for 158 days in 1999, 81 days in 2000, 109 days in 2001, 27 days in 2002 and 0 days in 2003 & 2004. A charge sheet dated 18.03.2004 was issued against the workman for the charge of unauthorized and willful absence from work. The workman did not submit his reply, hence vide order passed on 07.09.2004 management directed to conduct a regular departmental enquiry. The workman appeared and unconditionally admitted the charge. The management representative produced witnesses during the enquiry. The defense of the workman during the enquiry was that he was ill during this period which was not found correct and the Enquiry Officer filed his report holding the charge proved against the workman. The Disciplinary Authority, after considering the representation of the workman on enquiry report, awarded the punishment of dismissal from service which is not disproportionate to the charge.

Following issues were framed by my learned Predecessor vide his order dated 26.11.2015 :-

1. ***Whether the departmental enquiry conducted is legal and proper or not?***
2. **Whether the misconduct alleged is proved from the enquiry ?**
3. **Whether the punishment is disproportionate to the charge ?**

4. Relief to which the workman is entitled ?

Issue No.-1 was taken as preliminary issue and was decided on the basis of evidence against the workman vide order dated 13.06.2019 holding the departmental enquiry legal and proper. This order is part of this Award.

Parties were directed to file their evidence on remaining issues in form of documents/affidavit. They did not file any evidence.

None appeared for workman at the stage of argument, no written argument was filed, I have heard argument of learned Counsel learned Senior Counsel Mr. Anoop Nair, assisted by Mr. Neeraj Kewat for management. I have gone through the record.

Issue No.-2 :-

Learned Senior Counsel for management has referred to the enquiry papers, specially the admission of the workman and the statement of management witness in support of his argument that the charge was rightly held proved by the Enquiry Officer.

Learned Senior Counsel has submitted that the standard of proof required for charge to be proved in a departmental enquiry is not the same as it is in a criminal trial.

The settled proposition of law is that the charges need not be proved beyond reasonable doubt in a departmental enquiry. Following judgments are being referred to in this respect.

Scope of disciplinary proceedings and scope of criminal proceedings are quite distinct, exclusive and independent of each other. Standards of proof in the two proceedings are also different. Ref. ***T.N.C.S. Corpn. Ltd. vs. K. Meerabai, (2006) 2 SCC 255***

Standard of proof in a departmental enquiry which is quasicriminal/quasi-judicial in nature: Disciplinary proceedings, however, being quasi-criminal in nature, ***there should be some evidence to prove the charge.*** *Although the charges in a departmental proceedings are not required to be proved like a criminal trial i.e. beyond all reasonable doubts, we cannot lose sight of the fact that the enquiry officer performs a quasijudicial function, who upon analyzing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. Ref:* ***(i) Nirmala J. Jhala Vs. State of Gujarat & Another, AIR 2013 SC 1513 (paras 10 , 11, 12 & 13). (ii) M.V. Bijlani Vs. Union of India, (2006) 5 SCC 88 (Para 25)***

In the cases of (i) NOIDA Entrepreneurs Association Vs NOIDA & others, AIR 2007 SC 1161 (i4i) State Bank of India Vs. R.B. Sharma, (2004) 7 SCC 27 (iii) Kendriya Vidyalaya Sangathan Vs. T. Srinivas, (2004) 7 SCC 442 (iv) Depot Manager, APSRTC Vs. Mohd. Yousuf Miya, (1997) 2 SCC 699 (v) Captain M. Paul Anthony Vs. Bharat Gold Mines Limited (1999) 3 SCC 679 and (vi) State of Rajasthan Vs. B.K. Meena, (1996) 6 SCC 417 (vi) Pratap Singh Vs. State of Punjab, AIR 1964 SC 72 (vii) Jang Bahadur Singh Vs. Baij Nath, AIR 1969 SC 30, *it has been laid down by the Hon'ble Supreme Court that "the purpose of departmental enquiry and of prosecution are two different and distinct aspects. Departmental Enquiry is to maintain discipline in the service and efficiency of public service. Crime is an act of commission in violation of law or of omission of public duty. The enquiry in a departmental proceeding relates to the conduct or breach of duty by the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. It is the settled legal position that the strict standard of proof or applicability of the Evidence Act stands excluded in a departmental proceeding. Criminal Proceedings and the departmental proceeding under enquiry can go on simultaneously."*

In the case of ***T.N.C.S. Corporation Ltd. Vs. K. Meerabai, (2006) 2 SCC 255****, it has been held by the Hon'ble Supreme Court that the scopes of the disciplinary proceedings and of criminal proceedings are quite distinct, exclusive and independent of each other. Standards of proof in the two proceedings are also different.*

In the cases of ***Mohd. Saleem Siddiqui Vs. State of UP & others, (2011) 2 UPLBEC 1575 (Allahabad High Court) and Ajeet Kumar Naag Vs. General Manager Indian Oil Corporation Ltd. Haldia, JT 2005 (8) SC 425****, the distinction between departmental enquiry and criminal proceedings has been drawn as under: "The two proceedings i.e. criminal and departmental are entirely different. They operate in different fields and have different objectives. The object of criminal proceedings is to inflict appropriate punishment on offender and the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance service rules the rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of accused beyond reasonable doubts, he cannot be convicted by a court of law. In departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of preponderance of probability. Procedure with respect to standard of proof in criminal case and departmental enquiry are different. In the case of departmental enquiry the technical rules of evidence have no application and the doctrine of "proof beyond doubt" has also no application in the departmental*

enquiry. Criminal prosecution is launched for an offence for violation of a duty the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. There would be no bar to proceed simultaneously with departmental enquiry and trial of criminal case. "

I have gone through the enquiry papers and of the considered view that the admission of the workman corroborated with record and statement of management witness prove the charges.

Accordingly, holding the finding of the Enquiry Officer, the charges against the workman are held proved, issue no.-2 is answered accordingly.

Issue No.-3 :-

Learned Senior Counsel for management has referred to judgment of Hon'ble Supreme Court in the case of Maharashtra State Road Transport Corporation vs. Dilip Uttam Jaya Bhai (2022) 2 SCC 696 and has submitted that integrity is the core value that has to be maintained by an employee while in service. No employer can afford to have an employee on its rolls who has no integrity left in him.

The settled proposition of law is that the punishment can be interfered by this Tribunal only when it is so disproportionate to the charge that it shocks the conscience of this Tribunal. Following judgments are being referred to in this respect.

Hon'ble Apex Court in ***B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749*** while discussing about the scope of judicial review, in disciplinary matters, has observed as under:

> ***"The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mold the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, imposed appropriate punishment with cogent reasons in support thereof."***

In ***DG, RPF vs. Sai Babu (2003) 4 SCC 331***, Hon'ble Apex Court has observed that:

> ***"6……. Normally, the punishment imposed by a disciplinary authority should not be disturbed by the High Court or a tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant factors including the nature of charges proved against, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected of an discipline required to be maintained, and the department/establishment which the delinquent person concerned works."***

In ***United Commercial Bank vs. P.C. Kakkar (2003) 4 SCC 364*** Hon'ble Apex Court on review of a long line of cases and the principles of judicial review of administrative action under English law summarized the legal position in the following words:

> ***"11. The common thread running through in all these decisions is that the court should not interfere with the administrators' decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is judicial review is limited to the deficiency in decision-making process and not the decision.***
>
> ***12. To put it differently, unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court/tribunal, there is no scope for interference. Further, to shorten litigation it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof.***"

In ***Union of India vs. S.S. Ahluwalia (2007) 7 SCC 257*** Hon'ble Supreme Court reiterated the legal position as follows:

> ***"8. The scope of judicial review in the matter of imposition of penalty as a result of disciplinary proceedings is very limited. The court can interfere with the punishment only if it finds the same to be shockingly disproportionate to the charges found to be proved."***

In ***State of Meghalaya v. Mecken Singh N. Marak (2008) 7 SCC 580*** Hon'ble Supreme Court stated that:

"The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review.

Hon'ble Apex Court in *Administrator,* ***UnionTerritory of Dadra and Nagar Haveli vs. Gulbhia M. Lad (2010) 2 SCC (L&S) 101*** has observed that

"The legal position is fairly well settled that while exercising the power of judicial review, the High Court or a Tribunal cannot interfere with the discretion exercised by the disciplinary authority, and/or on appeal the appellate authority with regard to the imposition of punishment unless such discretion suffers from illegality or material procedural irregularity or that would shock the conscience of the court/tribunal. The exercise of discretion in imposition of punishment by the disciplinary authority or appellate authority is dependent on host of factors such as gravity of misconduct, past conduct, the nature of duties assigned to the delinquent, responsibility of the position that the delinquent holds, previous penalty, if any, and the discipline required to be maintained in the department or establishment he works. Ordinarily the court or the tribunal would not substitute its opinion on reappraisal of facts.

This extract is taken fro**m *State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya*, (2011) 4 SCC 584 : (2011) 1 SCC (L&S) 721 : 2011 SCC OnLine SC 416 at page 587**

7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (Vide B.C. Chaturvedi v. Union of India [(1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44] , Union of India v. G. Ganayutham [(1997) 7 SCC 463 : 1997 SCC (L&S) 1806] , Bank of India v. Degala Suryanarayana [(1999) 5 SCC 762 : 1999 SCC (L&S) 1036] and High Court of Judicature at Bombay v. Shashikant S. Patil [(2000) 1 SCC 416 : 2000 SCC (L&S) 144] .)

In ***Air India Corporation Bombay vs. V.A. Ravellow 1972 (25) FLR 319 (SC)*** it has been observed that:

"Once the employer has lost the confidence in the employee and the bona fide loss of confidence is affirmed, the order of punishment must be considered to be immune from challenge, for the reason that discharging the office of trust and confidence requires absolute integrity, and in a case of loss of confidence, reinstatement cannot be directed."

In ***Knhaiyalal Agarwal and others vs. Factory Manager, Gwaliar Sugar Co. Ltd. AIR 2001 SC 3645*** Hon'ble Apex Court laid down the test for loss of confidence to find out as to whether there was bona fide loss of confidence in the employee, observing that:

"Loss of confidence cannot be subjective, based upon the mind of the management. Objective facts which would lead to a definite inference of apprehension in the mind of the management, regarding trust worthiness or reliability of the employee, must be alleged and proved."

Charges proved are that the workman willfully absented himself from duty between the period 1999 to 2004. He was absent from duty for the whole period of 2003 & 2004. No employer can afford such absenteeism. Hence, holding the punishment not disproportionate to the charge, issue no.-3 is answered accordingly.

Issue No.-4 :

On the basis of findings recorded above, the workman is held entitled to no relief.

Accordingly, the Reference is answered as follows :-

A W A R D

Holding the action of management of South Eastern Coalfields Limited (SECL) through its Chief General Manager, Hasdeo Area and Managing Director, SECL, Bilaspur (CG) in imposing the penalty of dismissal from service vide order dated 31.03.2005 upon the workman Shri Shiv Kumar, Line Mazdoor, is legal, proper and just, the workman is held entitled to no relief.

No order as to cost.

DATE:- 25/06/2024

P. K. SRIVASTAVA**,** Presiding Officer

नई दिल्ली, 23 जुलाई, 2024

का.आ. 1447.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय राष्ट्रीय सहकारी उपभोक्ता महासंघ लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिश्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण –सह –श्रम न्यायालय**, जबलपुर के पंचाट (एलसी-आर/**85/2019**) को प्रकाि"त करती है, जो केन्द्रीय सरकार को **10/07/2024** को प्राप्त हुआ था।

[सं. एल-22013/01/2024-आई.आर. (सी.एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 23rd July, 2024

S.O. 1447.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Reference.LC/-R/85/2019*)*** of the **Central Government Industrial Tribunal-cum-Labour Court, Jabalpur** as shown in the Annexure, in the industrial dispute between the Management of **National Cooperative Consumers'Federation of India Ltd.** and their workmen, received by the Central Government on **10*/07/2024*.**

[No. L-22013/01/2024 – IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/85/2019

Present: P.K.Srivastava

H.J.S..(Retd)

Shri Sanjay Pandya,

3, Vyas Fala, Juni,

Indore (M.P.) – 452007

Workman

Versus

The Regional Manager,

National Co-operative Consumer's Federation of India Limited,

12-A, Dayal Complex, Zone-II, M.P. Nagar, Near FCI Office,

Bhopal (M.P.)

Management

A W A R D

(Passed on this 25th day of June-2024.)

As per letter dated 01/11/2019 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this tribunal under section-10 of I.D. Act, 1947 as per reference number J-1(1-7)/2019-IR dt. 01/11/2019. The dispute under reference related to :-

" Whether the action of the management of National Cooperative Consumers' Federation of India Ltd. In terminating the service of workman Shri Sanjay Pandya, Data Entry Operator by way of compulsory retirement w.e.f. 09.10.2015 is justified? If not, what relief the said workman is entitled for ? "

After registering the case on reference received, notices were sent to the parties and were duly served on them. Time was allotted to the workman to submit his statement of claim. In spite of the allotment of time and service of notice, the workman never turned up and submitted his statement of claim. Management also did not file its written statement of claim/ defence. No evidence was ever produced by any of the parties in this Tribunal.

The Initial burden to prove his claim is on the workman. Since the workman did not file any pleading nor did he file any evidence, in the absence of any evidence in support of holding the claim of the workman not proved, the reference deserves to be answered against the workman and is answered accordingly.

AWARD

In the light of this factual backdrop, holding that the claim of the workman is not proved, the reference deserves to be answered against the Workman and is answered accordingly.

Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P. K. SRIVASTAVA, Presiding Officer

DATE: 25/06/2024

नई दिल्ली, 23 जुलाई, 2024

का.आ. 1448.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एन.सी.एल.के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिश्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्यागिक अधिकरण –सह–श्रम न्यायालय**, जबलपुर के पंचाट(एलसी-आर/**09/2011**) को प्रकाि" ात करती है, जो केन्द्रीय सरकार को **10/07/2024** को प्राप्त हुआ था।

[सं. एल-22012/22/2010-आई.आर. (सी.एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 23rd July, 2024

S.O. 1448.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Reference.LC/-R/09/2011*)*** of the **Central Government Industrial Tribunal-cum-Labour Court, Jabalpur** as shown in the Annexure, in the industrial dispute between the Management of **N.C.L.** and their workmen, received by the Central Government on **10*/07/2024*.**

[No. L-22012/22/2010 – IR (CM-II)]

MANIKANDAN. N, Dy. Director

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ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/09/2011

Present: P.K.Srivastava

H.J.S..(Retd)

Shri Saroj Kumar Sahu

& 91 other Security Guards

NCL Hqs Bairak, PO/Distt.- Singrauli

Madhya Pradesh

Workman

Vs

The CMD

Northern Coalfields Limited,

At/PO/Distt.- Singrauli (M.P.)

Management

(J U D G E M E N T)

(Passed on this 24th day of June-2024)

As per letter dated 06/01/2011 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of Industrial Disputes Act, 1947 (in short the 'Act') as per Notification No. L-22012/22/2010 IR (CM-II) dt. 06/01/2011. The dispute under reference relates to:

"Whether, the action of the management of the Northern Coalfields Limited in terminating the services of Shri Saroj Kumar Sahu and 91 others Security Personnel (Contract Workers) is legal and justified ? To what relief the claimants are entitled for ?"

After registering a case on the basis of the reference, notices were sent to the parties and were served. Parties appeared and filed their respective statements of claim and defense.

The case of the workmen is mainly that they were appointed to work with the management of National Coalfields Limited (in short 'NCL') under the garb of contract workers through a contractor which is camouflage to deny these workmen their legally admissible dues and rights. These workmen worked in the premises of management of NCL, provided accommodation and other facilities by NCL, their provident fund contribution was deposited by NCL and they worked on the directions of officers of NCL. They worked continuously from 2005 to 2010 without any service break but their services were terminated without any notice or compensation which is against law and arbitrary on the part of management. They have sought their reinstatement with all back wages and benefits, setting aside their termination.

The case of management is mainly that these workmen are contract workers as this fact is disclosed from the reference itself. There is no employer-employee relationship between them and NCL they have not been appointed by NCL. The management of NCL is a licensed principal employer and engages contract workers for various miscellaneous works. As many as five contractors details given in para 17 of written statement were engaged from June 1998 to January 2010 by management for executing various miscellaneous works. These workmen were not employed by management and were not terminated by management. Accordingly, it has been prayed that the reference be answered against the workmen. In evidence, the workmen side filed two affidavits of workmen Dinendra Prasad and Saroj Kumar Sahu who never turned up for cross examination. Management filed affidavit of its witness who was not cross examined by workmen side inspite of opportunity given as no one turned up for workmen.

At the stage of argument also none appeared for argument from workmen side, hence argument of learned Counsel for management were heard.

Reference itself is the issue for determination in the case in hand. The initial burden to prove the fact that the contract was a sham transaction and camouflage is on workmen side. By way of filing only two affidavits against which the deponents did not turn up for cross examination, the workmen side is held to have miserably failed in discharging this burden.

On the other hand, the case of management is proved by uncross examined affidavit of management witness.

Hence, on the basis of above discussion, holding the claim of workmen side not proved, the reference deserves to be answered against the workmen and is answered accordingly. No order as to cost.

DATE:- 24/06/2024

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 23 जुलाई, 2024

का.आ. 1449.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एयर इंडिया लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिश्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण - सह - श्रम न्यायालय, कोलकाता** के पंचाट **(संदर्भ संख्या 42/2014)** को प्रकाि"ात करती है, जो केन्द्रीय सरकार को **22/07/2024** को प्राप्त हुआ था।

[सं. एल-11012/11/2024-आई.आर. (सी.एम-I)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 23rd July, 2024

S.O. 1449.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Ref. No. 42/2014*)*** of t**he Central Government Industrial Tribunal-cum-Labour Court, KolKata** as shown in the Annexure, in the industrial dispute between the Management of **Air India Limited** and their workmen received by the Central Government on **22/07/2024**

[[No. L-11012/11/2024 – IR (CM-I)]

MANIKANDAN. N, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL

KOLKATA

Present

JUSTICE K. D. BHUTIA

Presiding Officer

REFERENCE NO.42 of 2014

Parties: Employers in relation to the management of

Air India Limited

And

Their workmen

Appearances:

For the first party Management : Mr.Lancy D'Souza, Adv.

For the second party workmen : Absent..

Dated the 27th day of September, 2023

AWARD

Today has been fixed for evidence from the side of the union, but none appears from the side of the union today too like on the previous dates. On the other hand, management is represented by its learned counsel Mr.Lancy D'souza and Ms.Deepika Agrawal and who files their fresh vakalatnama. Let it be taken on record.

Learned counsel for the management submits that union has raised the present dispute when the concerned workmen who were paid excess overtime allowance were directed to refund the same. That concerned authorities of the management informed that in the due course, management has been able to recover the excess overtime payment from those concerned workmen. He further submits out of 24 workmen whose cause have been raised by the union 23 of them have already been retired except P.S.Bhattacharjee and perhaps for the above reason the union is no more interested and has not been pursuing with the present dispute raised by it. Therefore, he prays for passing necessary order.

It appears the Central Government, Ministry of Labour vide order no.L-11012/11/2014 (IRM(CM-I)) dated 15.5.2014, has referred the following dispute to the Tribunal for adjudication in exercise of the power conferred under section 10(1)(d) and (2A) of the I.D.Act:-

"Whether the action of the management of Air India Ltd. for recovery of overtime allowances paid to the staff of commercial department (passenger handling unit) at Kolkata for the period from April 2010 to March 2011 is legal and justified? To what relief the workmen are entitled to?"

In the record apart from statement of claim of the union I do not find any oral or documentary evidence to substantiate the claim or that concerned workmen were paid lawful overtime allowances for the period from April, 2010 to March, 2011 or that the claim of the management to recover the same from those concerned workmen is illegal and not proper.

Further, non-appearance of the workmen since 30.10.2019 and their failure to pursue the dispute espoused by them an inference can be drawn that the union is no more interested to proceed with the hearing of the case or perhaps the excess amount paid to them wrongfully has already been recovered by the management as submitted by learned counsel for the management.

In view of the above, no dispute award is passed and reference case no.42 of 2014 is disposed of.

Justice K. D. BHUTIA, Presiding Officer

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